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A CONTINENT LOST—A CIVILIZATION WON

INDIAN LAND TENURE IN AMERICA

By J. P Kinney

The Essentials of American Timber Law

The Development of Forest Law in America

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MARK L. BURNS

A mixed-blood Chippewa who has devoted intelligent and unceasing effort toward the economic and social advancement of the Indians during his thirty years of employment as a forester, superintendent and district supervisor in the United States Indian Service.

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A CONTINENT LOST—A CIVILIZATION WON

INDIAN LAND TENURE IN AMERICA

BY

J. P KINNEY, A. B., LL. B., M. F.

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TO MY MOTHER

who for sixty-five years, forty-four of them as a widow, has carried the responsibilities of a household with unfailing courage and undiminished industry and enthusiasm.

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The author desires to acknowledge his very great indebtedness to Dr. Annie Heloise Abel-Henderson, one of the outstanding students of American Indian history, for a most pains-taking reading of the manuscript for this book and for many helpful suggestions as to improvement in the form and subject matter of the same.

PREFACE

Many books have been written regarding the social, political and economic status of the American Indian. Most of them have had as a motive the exposition of the failure of the Federal Government to fulfill its obligations to a dependent and unfortunate race or the indictment of the methods and policies pursued in the effort of a dominant race to regulate the conduct and ameliorate the condition of a people who by the very force of circumstances occupied the position of a conquered race. Nearly all of these treatises, whether of an historical, biographical, sociological or fictional style, have contained intrinsic evidence of a sincere sympathy with the Indian and a desire to arouse the reader to an appreciation of the better qualities in the Indian character. They have generally emphasized the intense physical and mental suffering to which individuals of the native American race have been subjected since the arrival in America of the Europeans. Yet many of the authors of books, and to a greater extent the writers of more or less extensive contributions to popular periodicals, have presented only one side of the story and have apparently had no clear understanding of the almost insuperable difficulties involved in the problem of adjusting the relationships between the white and red races in America. Bungling and ineffective as the methods may have been, unscientific and temporizing as the policies of the dominant race surely have been, much of the criticism heaped upon the legislative and executive branches of the Government has been essentially unfair and unjust and in many instances the implied condemnation or open denunciation of public officials charged with the duty of administering Indian Affairs has been wholly unwarranted.

During a continuous period of more than twenty-five years of service in the Indian Bureau, the writer has enjoyed the opportunity of studying Indian Affairs at first hand and has had the privilege of personal contact with administrative officials and employees from Commissioners of Indian Affairs down to the most humble ranks of the Service. He has frequently disagreed with both the policies and the methods adopted by superiors, associates and subordinates but very seldom has he had occasion to question the integrity or sincerity of purpose of those with whom he has worked. More frequently has he felt that individuals in the Service were not as industrious and zealous as the urgency of the work required and occasionally he has observed the lack of forbearance with human fraility and the spirit of sacrificing helpfulness that should predominate in those engaged in the task of assisting an unfortunate or dependent group of people to adjust their habits and their lives to an unaccustomed procedure. However, the number of instances in which there has seemed to exist reason for disapproval, censure or condemnation has probably been no greater than might reasonably be expected in any group comprising several thousand public officials and employees. The writer derives great pleasure from the fact that he can, without mental reservation of any kind, accord high praise to the integrity, industry, loyalty, earnestness and intelligence of the great majority of the men and women who have, from the year 1910 to the year 1936, been engaged in a sincere, sympathetic and relatively successful effort to advance the welfare of the Indians of the United States.

A full understanding of the conditions that have confronted public officials engaged in the administration of Indian Affairs would materially soften the harshness of the criticism to which both the legislative and executive branches of the Government have been subjected. The writer has felt that he might contribute something toward such an understanding by presenting a discussion of Indian land tenure from the time of the earliest settlements on the Atlantic coast to the present time. The arduous task of gathering the material for the following chapters and of arranging the same in convenient form for perusal or reference would never have been undertaken except for an irrepressible feeling that some one should undertake an exposition of the many earnest efforts that have been made for the protection and advancement of the Indians.

If the future historian of the first third of the twentieth century were to base his evaluation of the purposes and accomplishments of the period upon the exposure of political and financial chicanery during the first decade, upon the revolting features of war and hate developed during the second decade, or upon the sordid record of alcholic indulgence and avaricious racketeering during the third decade, he would present a very distorted and unrepresentative delineation of the general conduct and character of the people of the United States throughout this period. The real character of the people, the purposes and accomplishments of the period, must be sought in a study of the habits and customs of the great majority of the citizens over a substantial period of time, when they are not influenced temporarily by false standards, swayed by blind passion, or unsettled and confused by unusual conditions. The essential qualities of character and purpose of a social or political group will be revealed in the standards of conduct that are maintained by the majority and these standards are reflected in the rules prescribed for the regulation of conduct, which are usually called ordinances or laws. When the conduct of men is uniformly exemplary no laws are required and one would be led far astray who should assume that the members of a social or political group were not practicing specific virtues simply because such group had no ordinance or law prescribing the practice of these particular virtues. Police regulations and laws are to a very large extent the result of non-social or immoral conduct on the part of a few individuals in the social or political group. These restrictive measures are formulated and enacted as a means of controlling the undesirable or predatory conduct of a comparatively small number of individuals in the group. The fundamental principles that govern the lives of such an association of men and women are reflected in the regulations and laws that are solemnly formulated and promulgated as representing the standards with which all members of the group must comply under penalty of a deprivation of privileges, of property, of liberty or of life itself.

It is because of a belief in this hypothesis that there have been presented in the pages that follow illustrative ordinances and laws enacted during the colonial period to regulate transactions with Indians regarding the lands that they occupied. These rules of conduct indicate a deliberate and determined effort on the part of the American colonists, as various social and political groups, to restrain the unprincipled members of society from taking unfair advantage of the Indians.

In a similar manner the declarations of purposes and policies by public officials, deliberately announced at the time that such purposes and policies are being carried into effect in the open sun-light of public observation and subject to the super-heated flame of political opposition, are entitled to the most careful consideration and to a high degree of credence as representative of the sincere aspirations and honest convictions of such officials. For this reason it was thought that it would be helpful to all students of Indian policy if there could be assembled in chronological sequence the statements of administrators of Indian Affairs as to the objects that they hoped to attain and the reasons for the courses of action followed.

Fundamentally the quotations and the discussions of this book regarding Indians have been restricted to policy and practice with respect to land tenure. However, such policies and practices cannot be properly appraised without an understanding of the background from which they arose. Accordingly, it seemed advisable, if not absolutely necessary, to present historical data and quote statements from various sources that tended to disclose the circumstances operating to mould public opinion and influence the judgment of legislators and administrators. On the one hand, the writer sought to avoid any accentuation of the viewpoint, obviously entertained by many citizens and perhaps by a relatively few government officials, that the Indians were an inferior and savage race, whose rights were entitled to a consideration secondary to those of the whites; and, on the other hand, the assumption that the course pursued by the dominant race had been motivated by unworthy objects and characterized by inhumane and cruel methods was consciously rejected. Even in the statements of those who have advocated a firm policy of dealing with especially indolent, recalcitrant or treacherous groups there will be found little evidence of an attitude of revenge or racial dislike. It has not been thought necessary or just to attribute ulterior motives as the basis for arguments or acts that have seemed unsound or unjustifiable. The subject has been approached with a realization of the inherent and almost insurmountable difficulties that faced the members of both the Caucasian and Indian races in an effort to adjust themselves to a situation for which the individuals of neither race were responsible. Certainly, the whites suffered many outrages at the hands of marauding and barbarous natives; and just as certainly the Indians were subjected to indignities and to restrictions of liberty that would have aroused keen resentment in any race and that may reasonably be offered as a defense of their stubborn and often infuriated resistence to the suppression of their natural rights.

Those who are accustomed to condemn in unmeasured terms the conduct of the whites toward the Indians have failed to view the relationship between the races from a sufficiently detached viewpoint. If one considers only individual instances of misfortune and injustice in any society his sympathy may lead him to a distorted view of the wrongs suffered by individuals; and the same is true as to groups of individuals. Any person of refined sensibilities who should, from a more favorable environment, betake himself to the slums of a great city and observe carefully the deprivations and degradations that many human beings there suffer would be greatly shocked and deeply pained. The same effect would be produced by a study of conditions in the squalid small villages in many mining districts. Even in the open spaces, " Far from the madding crowd's ignoble strife," in the remote districts of our northern States, on the depleted soils of the South and on the wind-swept prairies of the West, may be found families of whites maintaining a struggle against poverty, disease, and unfavorable natural conditions that is heart-rendering. When one reflects that these conditions are often accentuated by the avarice or thoughtless selfishness of their fellow beings, it is easy to develop an attitude of anger and unrestrained denunciation of more fortunate individuals or of society as a whole.

Such anger and denunciation may be justifiable and wholesome, but an effective improvement of conditions will not ordinarily result merely from some one's " boiling-over." Passionate feelings must be accompanied by, or followed by, sustained and well-directed effort toward alleviation of the unfavorable conditions. In most instances it will be found that one of the difficulties encountered will be the awakening of the unfortunate one to the possibilities of a fuller life; and the zealous advocate of an enriched life for the poverty-stricken and suppressed members of society may experience many a disappointment because of the failure of the objects of his solicitude to react to the stimuli of improved economic and moral conditions. In an attempt to appraise the success attained, or the failure experienced, in efforts to improve the conditions of life among the Indians, either in the past or in the future, one must not overlook the fact that certain qualities conducive to intellectual, moral and economic progress are lacking or strangely dormant in many Indians; and that the best of intentions, carried into execution with zeal and intelligence, frequently produce mediocre results.

Furthermore, students of the Indian problem must not confine their view to the present. The people of the United States have been wrestling with this problem for nearly a century and a half. In that time there have been many changes in the economic and social order, changes that could not have been foreseen even one decade in advance in many instances. Those of previous generations should not be too harshly judged for the adoption of methods and plans that later developments have shown to be unwise or poorly suited for the accomplishment of the results desired. In preparing a schedule of the wrongs that the present generation of Indians have suffered at the hands of the whites, a double-entry system should be used and there should be entered upon the balance-sheet the advantages that such generation has enjoyed. In listing the wrongs and misfortunes that their ancestors suffered, one should also set down on the opposite side of the sheet the wrongs and the sufferings that such ancestors inflicted upon the whites. And when these balance-sheets have been prepared, it would be well to forget the items and the balances and to start again with a "clean sheet." Fortunately few persons in our industrial and agricultural classes concern themselves greatly with the injustices that their ancestors have suffered at the hands of society as a whole. If they did, many of them could present indictments against the nation as formidable as those that can be formulated in behalf of tens of thousands of the American Indians now living. Nothing can be more destructive of good will between the races or more inimical to the advancement of which the Indian is capable than the immoderate accentuation of the idea that the United States Government is under a special obligation to all citizens who have Indian blood as a distinct class because of real or fancied injustices to their ancestors.

"Let the dead bury their dead," and let us move on together in hopeful and trustful brotherhood to future accomplishments as citizens of the magnificent Republic to which we all owe allegiance.

J. P KINNEY

Washington, D. C.,
October 8, 1936.

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CHAPTER I

Indian Land Tenure Policy During the Colonial Period

When Christopher Columbus, in search of a western route to the Orient, reached the West India Islands in 1492, he found them inhabited by men with copper colored skins and habits of life quite different from those of the men previously visited in the Orient by Europeans. However, Columbus believed he had discovered unknown islands southeast of Asia in the group known as " The Indias " and so he called the inhabitants " Indians " entirely ignorant of the fact that the islands later called the " East Indias " to distinguish them from the " West Indias " were more than three thousand miles distant and separated from the lands he had discovered by an ocean far more expansive than the one for the crossing of which his three sailing vessels had required more than two months. Thus it happened that the name " Indian " has throughout the following centuries been applied both to the people of East India in southern Asia and to the native inhabitants of the North and South American continents and the adjacent islands.

In accordance with an agreement made before he left Spain, Columbus took possession of the newly discovered lands in the name of the crown of Castile. This agreement had provided for the enjoyment of substantial honors and emoluments by Columbus but political control over the lands that should be discovered was to be exercised by King Ferdinand and Queen Isabella of Spain. From that time forward the Spanish explorers assumed that all lands found by them in the New World became possessions of the rulers of Spain. Slight consideration, if any, was given to any theory as to the legal right of the native inhabitants to determine the use to be made of the soil of the Americas. However, from the very earliest period the official decrees and instructions emanating from the Spanish Government breathed a spirit of great interest in the natives of America and exhibited a sincere desire to promote their happiness and welfare.[1]

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[1] See article by Cyrus Thomas as introduction to *Indian Land Cessions* by

While not recognizing that the Indians had a property right in the whole territory over which they roamed or which they occasionally visited, the Spanish authorities sought to secure to the natives the lands that they were actually using and that were considered necessary for the subsistence of the Indians. Apparently the Spanish Government never adopted the policy of purchasing the Indian title to land but recognized the propriety of compensating the Indians for the taking of their village sites or other lands actually used by the Indians. The records disclose that even the responsibility of compensating them for the taking of lands that they were actually using was often avoided by private individuals and even ignored by public officials.[2] This disregard of honorable principles by individual Spanish subjects and officials may form a basis for condemnation of the Spanish Government only to the extent that it reflects a weakness in the administration of the policies that had been adopted.

The French likewise never recognized the legal title of the American Indians to their hunting grounds nor to the lands actually used for agricultural or domestic purposes. It is questionable whether the Government of France ever recognized a legal right of occupancy in the Indians. It appears to have been the theory of the French that when a tribe or nation of Indians agreed to come under the French dominion this agreement carried with it the right of the French Government to full ownership and political control over the lands that had been occupied or claimed by the Indian tribe or nation.[3] Few controversies over land titles or possession seem to have arisen in the French settlements in America. The French immigrants to the New World were accustomed to fraternize with the Indians, to intermarry and amalgamate with them. So effective was the influence of the authorities or so considerate the conduct of the individuals in their private dealings with the Indians that no occasion appears to have arisen for the enactment of special statutes to govern the relations between the races.

Charles C. Royce, 18th Ann. Rep. Bureau Amer. Ethnology (Washington, D. C., Government Printing Office), pp. 539-542, quoting early Spanish laws.

[2] *Ibid.*, p. 543.

[3] Thomas article in 18th Ann. Rep. Bur. Amer. Eth., p. 546.

From the time of the first settlements of the French in America much attention was given to the Christianization of the natives. To further this policy and at the same time strengthen the French settlements the Indians were encouraged by the Government to settle in close contact with the colonists and to raise their children according to the French manners and customs.[4] However, as the settlements of the English extended back from the Atlantic Coast and competition for the fur trade and the good will of the natives increased, relations between the French and the Indians were at times somewhat strained. Near the close of the seventeenth century, in 1686, a French official in New France wrote to his superior in Old France that the English in dealing with the Iroquois observed a policy of making presents for the title to land which they wished to obtain from the Indians.[5] There is in this statement an indication that the French had not been accustomed to pay the Indians for their right of occupancy.

The early English charters, patents and grants are as silent regarding any legal right of the American Indians to the lands occupied by them as are the state papers of Spain or France dealing with the New World. The English documents, like the decrees and instructions promulgated by the Spanish and French governments, frequently referred to the state of savagery and unenlightenment in which the natives were living and expressed the desire and purpose of the Government to propagate the Christian religion and extend the true knowledge and worship of God to those who were looked upon as living in a state of gross intellectual darkness and religious infidelity. The few treaties or agreements made by the English Government directly with the Indians covered only rights of sovereignty and may not reasonably be construed to convey to the English any property rights. However, as most of the charters, patents and grants from the English sovereign did not purport to convey sovereignty rights, it is a fair inference that they must have been intended to convey property rights. It is difficult to believe that such documents were intended to convey only the privilege of acquiring from the native inhabitants the lands described in the charters, patents or grants. Apparently it was from these implications, rather than from any positive statements, that the theory was later worked out in English and American law that the fee title to lands occupied or claimed by Indian tribes was in the English sovereign, and later by succession in the United States, while the Indians held merely a right of occupancy of the lands.

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[4] New York Col. Doc. IX, pp. 59, 150.

[5] *Ibid.*, p. 289.

From the first it seems to have been taken as a matter of course by England, France and Spain that the discovery of land in the Americas resulted in the attachment to the land of the right of sovereignty for the nation in the name of which the discovery was made and that as soon as possession of the land was taken the ownership and control of the nation was complete and unassailable except by right of conquest.[6] In the various contests between the English, Dutch, French and Spanish for the control of certain areas in North America, a prior discovery was usually alleged as a basis for a claim for any lands that had actually been occupied, or at least explored, by another nation. While there appears to have been no convention or written agreement between European nations as to the basis upon which title or sovereignty should rest in America, all seem to have accepted substantially the same theory and when, after the middle of the eighteenth century, transfers of sovereignty and title began to be made between nations the right acquired through discovery was recognized as the primary basis for both. In fact this principle had been recognized in the very commissions under which many of the discoveries were made. Thus the King of England had authorized the Cabots to discover countries " then unknown to all Christian people." The charter to Sir Humphrey Gilbert, issued in 1578, had authorized him " to discover and take possession of such remote, heathen and barbarous lands as were not actually possessed by any Christian prince or people." [7] Other charters contained similar provisions and, in theory at least, the various European nations declined to enter claim to lands over which the beneficent advantages of " Christian occupation " had been extended by another nation. Certain it is that none of the European nations considered the legal right of the Indians superior to that of one of its rival European nations whose representatives had taken possession of lands in America.

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[6] International law as developing at the time supported this position. See Vattel, *The Law of Nations,* translation, Dublin, 1792, Luke White, Chap. VII, p. 67, Par. 81; Chap. XXII, p. 193, Par. 266. See also Bulkley, *An Inquiry into the Right of the Aboriginal Natives to the Lands in America, and the Titles Derived from them* (written in 1724), Pub. in Collections of Massachusetts History Society for 1795, Boston 1795, Reprinted 1835 by John H. Eastburn, pp. 159, 163-165, and 179. Sidney Perley, *Indian Land Titles of Essex County in Massachusetts* (Salem, Mass., Essex Book and Print Club, 1912), p. 17. Perley refers to Statute of 1701, Acts of 13th William III declaring all deeds from Indians to private citizens, subsequent to the Massachusetts Court Order of 1633, had the force of estoppel only, unless approved by the General Court.

It would appear that the aspirations of the European governments were fairly well satisfied with the extension of political sovereignty over the newly discovered lands and the establishment of commercial relations that would insure a flow of goods or income to the home country. For nearly a hundred years after the discovery of the New World the political power of Spain increased steadily and gold and silver flowed to her from America in a mighty stream. During the seventeenth century the political power and commercial activity of France was greatly expanded through her possession of American colonies. The establishment and development of American colonies by the English accounts for no small part of the political and commercial ascendancy that England enjoyed from the accession of William and Mary to the separation of the colonies in the last quarter of the eighteenth century. Since the imperial purposes of the European nations were directed primarily to the establishment of sovereignty and the maintenance of favorable world trade conditions, questions of land titles and other local administration were left very largely to local authorities in the Spanish, French and English settlements. Especially was this true of the English colonies which had from the first exhibited a marked capacity for local self government.

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[7] Johnson and Graham Lessee *v* McIntosh, 8 Wheaton 543 (Decided 1823).

From the very earliest date the legislative authorities of the English colonies in America appear to have been reasonably solicitous regarding the moral and legal rights of the aboriginal inhabitants. As early as 1633 the General Court of Massachusetts declared in a legislative order:

> That what lands any of the Indians in this jurisdiction have possessed and improved, by subduing the same, they have just right unto, according to that in Gen. 1, 28, and Chap. 9.-1 and Psal. 115, 16.[8]

References of this character in an ordinance or statute seem rather incongruous to the modern reader, but the Puritans were accustomed to search the Scriptures for authority for most of their acts that took on any degree of solemnity and it is not strange that in recognizing the moral and legal rights of the natives to enjoy the benefits of lands that they had improved these colonial lawmakers should have remembered the passages in Holy Writ in which God was said to have bestowed his blessing upon those who were to cultivate the earth and the verse in the 115th Psalm in which it was said that the Lord had given the earth to the children of men.

The following words from the order of the court further reveal the pious sentiment that actuated the Puritans:

> And for the further encouragement of the hopeful work amongst them for the civilizing and helping them forward to Christianity, if any of the Indians shall be brought to civility, and shall come among the English to inhabit, in any of their plantations, and shall there live civily and orderly, that such Indians shall have allotments amongst the English, according to the custom of the English in like case.

It was quite common among the early New England settlers to have the authorities " allot " to different individuals the lands that they were to hold and cultivate. Certainly a solemn legal enactment that the Indians who should adopt the ways of the whites and devote their efforts to productive pursuits should receive the same treatment as the English constitutes incontrovertible proof of the good will that many of the settlers entertained toward the natives. Further expression of English friendliness toward the Indians is found in a portion of the same order which reads:

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[8] *Laws of the Colonial and State Governments, relating to Indian Affairs from 1633 to 1831* (Washington, Pub. Thompson and Homans, 1832).

> *Further it is ordered,* That if, upon good experience, there shall be a competent number of the Indians brought on to civility, so as to be capable of a township, upon their request to the General Court, they shall have grant of lands undisposed of, for a plantation, as the English have.

However, by the next paragraph of the act of 1633 it was enacted:

> That all the tract of land within this jurisdiction, whether already granted to any English plantations or persons, or to be granted by this Court (not being under the qualifications of *right* to the Indians) is, and shall be accounted the just right of such English as already have, or hereafter shall have grant of lands from this Court, and the authority thereof, from that of Gen. 1, 28, and the invitation of the Indians.

Section 2 of the act of 1633 reads:

> *And it is ordered,* That no person whatsoever shall henceforth buy land of any Indian, without license first had and obtained of the General Court; and if any offend herein, such land so bought shall be forfeited to the country.

The sections quoted from the act of 1633 disclose clearly the viewpoint of the English colonists with respect to land ownership in Massachusetts. They apparently held that political and legal control of the land was vested in the constituted English authority of the colony and that such authority could grant lands as it should see fit for the use of whites and Indians. As noted above the Massachusetts General Court recognized that the actual use of lands by Indians should establish their right to the same. The conception that the right of the Indians to certain lands was primarily dependent upon their occupation and improvement of the same was essentially the view obtaining in Spanish and French settlements and was somewhat analogous to the doctrine of beneficial use later developed in semi-arid regions of the United States with respect to the use of water.

In 1665 the above provision regarding the purchase of Indian land without license was explained and clarified as follows:

> This Court doth declare the prohibition there exprest, referring to the purchase of Indian land without license from this Court, is to be understood, as well grants for term of years, as forever, and that under the same penalty as in said law is exprest.

With respect to a plantation that had been given by the town to the Indians, it was voted at a town meeting held at Dorchester, Mass., on December 7, 1657, "that the Indians shall not alienate or sell their plantation, or any part thereof, unto any English."

That the English settlers of Massachusetts were not insensible to complaints by the Indians is shown by an order of 1657, reading:

> *It is ordered by this Court*, That, in all places within this jurisdiction, the English shall keep their cattle from destroying the Indians' corn, in any ground where they have right to plant; and if any of the corn be destroyed, for want of fencing or herding, the town shall make satisfaction, and shall have power among themselves to lay the charge where the occasion of the damage did arise; *Provided*, That the Indians shall make proof that the cattle of such a town, farm, or person, did the damage.

An act of 1747 declared that the prohibition against unauthorized purchases of land from the Indians was intended to extend to and did cover: "all devises of real estate made by the last wills and testaments of any of the said Indians."

The preamble to an act of 1758 declared that the acts for regulating dealings with the Indians had proved to be very beneficial to the Indians and provided for the appointment by the Court of three proper persons, near to every Indian plantation of the province, who should act as:

> Guardians to the said Indians in their respective plantations, who are empowered from and after the twenty-third day of June, A. D. 1758, to take into their hands the said Indians' lands, and allot to the several Indians of the several plantations, such parts of the said lands and meadows as shall be sufficient for their particular improvement from time to time during the continuance of this act; and the remainder, if there be any, shall be let out by the

guardians of the respective plantations, to suitable persons, for a term not exceeding the continuance of this act; and such part of the income thereof as is necessary, shall be applied to the support of such of the proprietors in their respective plantations as may be sick or unable to support themselves; and the surplus thereof, if any there be, distributed amongst them according to their respective rights or interest, for providing necessaries for themselves and families, and for the payment of their just debts, at the discretion of their said guardians; and that the respective guardians aforesaid be hereby empowered and enabled, in their own names, and in their capacities as guardians, to bring forward and maintain any action or actions for any trespass or trespasses that may be committed on the said Indian land; and that any liberty or pretended liberty obtained from any Indian or Indians for cutting off any timber, wood, or hay, milking pine trees, carrying off any ore or grain, or planting or improving said lands, shall not be any bar to said guardians in their said action or actions: *Provided*, That nothing in this act shall be understood to bar any person or persons from letting creatures run upon the said Indians' unimproved lands that lie common and contiguous to other towns or proprietors.

And be it further enacted, That from and after the twenty-third day of June aforesaid, no Indian or Indians shall sell or lease out to any other Indian or Indians any of his or her lands, without the consent of the guardians, or a major part of the guardians of the Indians of the plantation wherein such lands do lie; and all sales or leases of land for any term or terms of years that shall at any time hereafter during the continuance of this act, be made by any Indian or Indians to any other Indian or Indians, shall be utterly void and of none effect, unless the same be made by and with license of the respective guardians as aforesaid.

And be it further enacted, That no action shall be brought against any of the said Indians for any debt hereafter to be by them contracted with any English persons for any sum whatsoever, unless the same be first examined and allowed by the Court of general sessions of the peace for the county where such Indian or Indians live etc.

To any one who has carefully studied the history of the course pursued by the Government of the United States in dealing with Indian affairs throughout the nineteenth century and the first third of the twentieth century, or to the thoughtful person, unfamiliar with such history, but with a reasonable amount of experience in actual and intimate contact with the "problem of Indian administration," the language just quoted from the Massachusetts act of the year 1758 is acutely significant. It indicates clearly that the earlier efforts of the New England settlers to allow the Indians adjacent to the settlements a large degree of independence in their relations to, and social and economic intercourse with, the new-comers had failed. The earlier legislative enactments, cited above, indicated a hope and belief that many of the Indians would come and live " civily and orderly " among the whites, that they would take their "allotments " of land, improve the same and prize the ownership as highly as the whites did who had come to the shores of the New World " land hungry." But the hope was apparently founded upon false premises. The earliest historical records indicate that soon after the whites began to swarm into the new land, the Indians began to realize that they were losing certain advantages that they had formerly enjoyed in roaming and hunting wherever they pleased and to raise more or less strenuous objection to being pushed out of their former locations. However there seems to have been no sharply developed sense of ownership in land and the higher valuation that they placed upon present enjoyment over future advantages led them to part readily with their claims to lands that the regularly constituted authorities of the provinces recognized as belonging to them.

It is apparent that by the year 1758 it had become generally recognized by the legislative authorities of New England that the Indians were incapable of protecting themselves against the cupidity and schemes of the whites, and that it was necessary for the government of the colony to increase very definitely the degree of control that must be exercised over the property of the natives. Whereas the earlier laws had specifically forbidden whites to acquire lands from the Indians without the consent of the established authorities, the act of 1758 extended a guardianship over the Indians and their property not unlike that which was considered necessary for the protection of minor children and mentally incompetent adults among the whites. As we trace the development of Indian policy by the Federal Government from 1789 onward we shall find a progressive extension of authority over the property and even the person of the Indian during certain periods; and if we will examine closely the development of such extensions, we shall find that they were the result of convictions on the part of the governing authorities (possibly erroneous convictions in many instances) that such extension of governmental authority was essential to the welfare of the Indians themselves. Those who have been closely identified with the administration of Indian affairs will readily recall instances in which it seemed necessary that the governmental supervision over the affairs of individual Indians and of groups of Indians be extended for the protection of the Indians.

The early Massachusetts legislation cited above is illustrative of the enactments that will be found in other colonial records. As early as 1640 laws were enacted in both the Hartford and New Haven settlements of Connecticut prohibiting the purchase of land from the Indians by private persons without the consent of the General Court. Subsequent enactments were directed toward the prevention of trespass upon fields of corn belonging to the Indians by cattle, horses or swine owned by whites. A Connecticut act of October 11, 1722, imposing a penalty of fifty pounds for the purchasing of lands from the Indians without the consent of the colonial assembly, was evidently directed primarily to the protection of the white community and used the significant words " under colour and pretense of such Indians being the proprietors of such lands by a native right." Here was an implied denial that the fee title to the land belonged to the Indians, a denial that had been made in very positive terms in an act of May 1717. In fact the colonial laws progressively tended not only to recognize the need for greater safeguards against the improvident disposal of their lands by the Indians but also to protect the colonists against the evils that inevitably must follow the indiscriminate and uncontrolled purchase of land directly from the natives. Serious difficulties arose in various colonies because of the conflicting interests of those who claimed to have acquired their rights from Indians and because of the dissatisfaction of the Indians with the treatment that they had received at the hands of unscrupulous whites. Roger Williams appears to have considered the right of the Indians to the lands occupied by them as even superior to that of the English King yet, notwithstanding the announced opinion of Williams and his immediate associates in the founding of the Rhode Island Plantations, unauthorized purchases of land from the Indians were not favored and as early as 1651 an Order of the Rhode Island legislative authority provided for a forfeiture to the colony of any lands purchased without its consent.

John Smith's History of Virginia and other records show that from 1609 onward lands were purchased by the English colonists from the Indians residing in the territory settled as Virginia. However, there were fraudulent purchases and encroachments which led to dissatisfaction and hostility on the part of the Indians, culminating in open attacks by the natives about 1640. Acts of the Grand Assembly under dates of October 10, 1649 and July 5, 1653 described the lands to be inhabited by certain chiefs and their tribes. By the latter act the Commissioners of Northampton County were authorized to buy lands from the Indians on condition that the majority of the Indians desired to sell and that the terms were just. A Virginia act of March 10, 1655 contained the following:

> What lands the Indians shall be possessed of by order of this or other ensueing Assemblyes, such land shall not be alienable by them, the Indians, to any man de futuro, for this will put us to a continuall necessity of allotting them new lands and possessions and they will be allwaies in feare of what they hold, not being able to distinguish between our desires to buy or inforcement to have, in case their grants and sales be desired; Therefore be it enacted, that for the future no such alienations or bargaines and sales be valid without the assent of Assembly. This act not to prejudice any Christian who hath land allready granted by pattent.

This act, like the Massachusetts act quoted above, bears evidence of the general acceptance of the theory that the regularly constituted governing authority of the colony could determine what lands within the colony the Indians were to occupy. It likewise clearly recognized that in the lands that they occupied the Indians held an interest of which they could not be deprived without just compensation. The provision in the act of

1655 as to the inalienability of lands assigned to Indians shows that, three years before the enactment of a similar law in Massachusetts, the conclusion had been reached in Virginia that the Indians were incapable of resisting inducements to part with their lands, however restricted in area and necessary to their sustenance such lands might be. The improvidence of the Indians with respect to their lands appears to have been general. The failure of the Indians to appreciate the value of their lands for future use and especially their inability to resist the temptations of immediate enjoyment offered them in place of their lands are easily understood. It was clearly the duty of the constituted authorities of the colonies to protect the Indians from the schemes of unscrupulous white men that were directed toward the acquirement of lands to which the Indians were justly entitled. Laws enacted in the various colonies were directed toward the protection of the Indians but there is abundant evidence that they were not vigorously enforced. Conditions were such as to make their enforcement exceedingly difficult.

Legislation passed by the Grand Assembly of Virginia in the year 1658 was not only very specific and complete as to the protection to be accorded the Indians with respect to their lands but boldly recited the fact that the Indians had not been fairly treated by many of those who dealt with them.[9] No one who shall read this legislation without prejudice can fail to note the sincerity of those who drafted the legislation. Undoubtedly some of those who voted favorably upon the bill as presented were not as solicitous about the rights of the Indians as the language indicates and the record as to the Indian attacks upon the whites both before and after the year 1658 would indicate that some of the legislators may have been influenced in voting for such legislation by fears of Indian wars as much as they were by altruistic motives. Nevertheless the very fact that such legislation was passed indicates clearly a purpose on the part of the responsible government of the colony to restrain its citizens from encroachment upon the rights of the Indians and a desire to encourage the Indians in self-support and advancement. A Virginia act of 1660 recited the fact that the Accomack Indians complained that the English were encroaching upon their lands and directed that the Governor appoint two or three gentlemen and a surveyor " living on this side of the bay, (that having no relation to Accomack) to go over thither, and lay out such a proportion of land for the said Indians as shall be sufficient for their maintenance with hunting and fishing excluded; and that the land so laid out, to be so secured to the Indians that they may have no power to alienate it, or any part of it, hereafter to the English." Such legislation was eminently just.

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[9] *Laws of Colonial and State Governments, 1633-1831,* p. 148.

Laws similar to those of Massachusetts and Virginia were enacted in New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina and Georgia in the first half of the eighteenth century.[10] The government of each of these colonies found it necessary to forbid the purchase of land from the Indians without the previous approval of the constituted authorities as a protection to the Indians, as a preventive of fraud upon the public or upon the proprietors of a colony, or as a guaranty against the development of controversies between the citizens of a colony. A Maryland act of 1704 set aside an area for the Nanticoke Indians where they " should have a convenient dwelling place in this their native country free from the encroachments and oppressions of the English." It is clear from the language of this act that grants had already been made to Englishmen within the area thus given to the Indians. Whether the Indians had formerly released their rights of occupancy to this territory to Lord Baltimore or whether he had granted the lands to whites without the consent of the Indians is not known. However, the language of the act, as well as that of acts in Virginia and other colonies, raises a strong presumption that the early English settlers and proprietors frequently assumed control over and asserted possession of lands which had not been purchased from the Indians. It seems

[10] *Laws of the Colonial and State Governments, 1633-1831*; Thomas article in the 18th Ann. Rep. Bureau Amer. Ethnology.

probable that the earlier English attitude was not substantially different from that of the French and Spanish as to the appropriation of lands without compensation to the Indians. Yet, through the development of a public sense of fairness to the Indians, because of a desire on the part of individuals to fortify their claims to certain lands by a color of title from the original occupants, or on account of the growing opposition of the natives to the encroachment of the whites upon the lands formerly occupied by them, a custom of purchasing lands from the Indians became general in the English colonies. The divergence of the English practice from that of the French and the Spaniards may have been due largely to the fact that the English were more disposed to establish distinct white settlements with a relatively restricted intermingling with the natives.

As the years passed the evils of a system under which free and unrestricted purchases of land could be made became ever more evident and a South Carolina act of 1739, forbidding purchases of land from Indians without the approval of the provincial authorities, bluntly stated the reason for the act to be that:

> such purchases being generally obtained from the Indians by unfair representations, fraud, and circumvention, or by making them gifts or presents of little value, by which practices great resentments and animosities have been created amongst the Indians toward the inhabitants of this province.

A Connecticut act of 1657 had prescribed a heavy penalty for the offense of selling, bartering or giving strong liquor to an Indian and later laws in other colonies sought to protect the Indians from the results of intoxication. Section seven of a Maryland act of 1723 indicated clearly that some agreements regarding land sales had been obtained while the Indians were under the influence of liquor.

Until approximately the middle of the eighteenth century the English Government concerned itself little with Indian problems in the American colonies. For more than a hundred years the English colonists in North America had largely determined their own policies regarding the course that should be pursued toward the natives and as a result of their mistakes, or as an inevitable consequence of the settlement of highly civilized Europeans among a people still living in a very primitive culture, frequent sanguinary conflicts between the whites and the redmen had taken place. Englishmen living in England had been keenly sympathetic with the colonists who were thus compelled to risk and lose their property and their lives for the protection of their families and homes in the New World, but the governmental authorities in far away England had never realized how essential it was to the nation that the colonies be protected from Indian raids and supported in their claims to lands yet unsettled.

The union of England and Scotland into the Kingdom of Great Britain in 1707, the successful close of Queen Anne's War in 1713 and of King George's War in 1748, through which the prestige of the nation was greatly advanced, had aroused in the British nation a new confidence and vision of imperial destiny. It became clear to British statesmen that any future war might involve the protection of the British colonies in America. In fact the very existence of the colonies might prove a source of weakness to the mother country unless she were prepared to defend them against the attacks of other nations. The colonists themselves felt the new impulse to expansion. Upon the urgent representations of Americans the British Government in 1748 granted a charter to the "Ohio Company" two objects of which were the settlement of the Ohio River valley with Englishmen and the development of trade with the Indians of that region. In 1753 Duquesne, the Governor of Quebec, under instructions from the French Government, issued a proclamation declaring that all territory west of the Alleghany Mountains belonged to France and announced that no settlement of British subjects on the Ohio River would be permitted. The following year colonial troops of Virginia under the command of George Washington were repulsed from the disputed territory by French soldiers and their Indian allies.

The Indians of western Pennsylvania and the upper Ohio valley had become thoroughly aroused through the encroachments of the English which the colonial governments were unable or unwilling to prevent. The French lost no opportunity to inflame the natives against the evident purposes of the English to extend their settlements and expand their influence in the west. In 1754 a meeting of representatives of various colonies at Albany, New York, was arranged for the purpose of formulating a concerted plan of defense against the Indians and the French but colonial jealousies and misunderstandings prevented any effective action.[11] The virile William Pitt soon became the most powerful man in the British government and, infusing the whole nation with his enthusiasm, waged an unrelenting and successful war in which, during the years 1758 to 1762, the French fleet was completely crushed and the land forces of France and her Indian allies in the Ohio Valley and Quebec thoroughly beaten. Under the treaty of peace signed at Paris in 1763 France ceded to Great Britain the Province of Quebec and all her claims to lands of the North American mainland east of the Mississippi River, except a small tract at the mouth of the Mississippi, known as New Orleans. Great Britain was now in possession of practically all of the North American continent east of the Mississippi, including Florida which had been ceded to her by Spain at the same Treaty of Paris.

As stated above, prior to 1748 the English Government had exhibited little interest in land titles or Indian trade in America. Subsequent to that time the American colonists, because of their inability to out-match the French and their Indian allies, had felt impelled to direct the attention of the imperial government to the potential value of the lands west of the Alleghany Mountains. Thus were the colonists themselves responsible to a large extent for the development by the British Government of a keener interest in colonial affairs. It must not be assumed that the colonists were themselves in full agreement as to a policy of establishing settlements on lands of the Ohio River drainage basin. Those who were engaged in the fur trade were perhaps generally opposed to the crowding of settlers into the Indian country for this would require them to push their trading posts farther back into the wilderness. Many holders of vast tracts of unsettled land east of the mountains also opposed a policy of settlement west of the mountains which might prevent appreciation and possibly result in depreciation of their land holdings farther east. These circumstances, as well as colonial political jealousies, may account partly for the failure of the Albany Congress of 1754.

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[11] Beer, *British Colonial Policy, 1754-1765* (New York, Peter Smith, 1933).

The President of the British Board of Trade and some of his associates became intensely interested in the problem of colonial expansion in America and convinced of the need for a unification of policy and a centralization of authority. After the failure of the Albany Congress to achieve results they went forward with a plan for a unified control of Indian trade and for the regulation of land acquisition from the Indians. In the Spring of 1756 Sir William Johnson and Edmund Akin were appointed as Indian Superintendents in the northern and southern districts of the colonies, respectively. The reports of these superintendents, especially those of Johnson, show that there had been instances of the fraudulent purchase of land from the Indians and of the occupation of land before purchase.[12] In 1754 Governor Dinwiddie of Virginia had suggested the taxing of the colonies to carry on war with the French and Indians and as early as 1756 he advocated the requiring of a license for all Indian traders and the regulating of the trade so as to secure fair treatment of the Indians and thus overcome their disaffection.

The French and Indian War which was formally announced by Great Britain in May 1756, but which really began in 1754, focused the attention of both the colonists and British statesmen on the need for a policy that would afford security from Indian attacks upon the colonists. At Easton, Pennsylvania, in October 1758 a treaty was made with the Indians under which it was agreed that no settlements west of the Alleghany Mountains would be made within Pennsylvania. The British ministry at the time would probably have welcomed an extension of such policy to other colonies but was unable to enforce it. In 1759 the Assembly of Pennsylvania petitioned the Privy Council concerning disputes with the Indians and on June 1 of that year the Lords of Trade submitted a report thereon which referred to frauds and abuses as to the treatment of Indians in colonies and provinces other than Pennsylvania. There was a sharp division in the British Government itself. One group favored a policy of restricting settlement and pacifying the Indians; another group favored a policy of colonial expansion, whatever the outcome. Some members of the Government believed that a policy of imperial control of Indian trade and administration, as well as a national land policy in America, was imperative; others counseled the abandonment of the imperial policies already adopted and a return to the system of administration of such matters by the separate colonial governments.

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[12] Alvord, *The Mississippi Valley in British Politics* (Cleveland, Ohio, Arthur H. Clark), I, p. 117 *et seq.*

On March 21, 1761 Lord Halifax, who had been the leader in the effort to effect an imperial control of Indian administration in British America, resigned. On October 9, 1761 the Earl of Egremont, who had become Secretary of State for the Southern Department, announced a new policy of not granting lands or establishing settlements on the frontier until the outcome of existing difficulties should be known and the Indians pacified. On October 13, 1761 Colonel Bouquet in charge of British forces on the frontier issued a proclamation prohibiting all settlements west of the mountains for the time being. In a report of November 23, 1761 the Lords of Trade advised the Royal Council and the King of Great Britain that there was much justice in the complaints of the Indian allies in America because of the manner in which their rights had been ignored and that the treatment the Iroquois and other tribes had received was calculated to cool their ardor for the English cause as against the French, if not to alienate them entirely. They declared that the recognition of previous faults of administration and the correction of the same had already resulted in a cessation of hostilities and the conversion of some of the tribes from inveterate enemies to fast and faithful friends. Among other things the Lords of trade reported:

> That under these circumstances and in this scituation the granting Lands hitherto unsettled and establishing colonies upon the

> Frontiers before the claims of the Indians are ascertained appears to be a measure of the most dangerous tendency, and is more particularly so in the present case, as these settlements now proposed to be made, especially those upon the Mohawk River are in that part of the Country of the Possession of which the Indians are the most jealous having at different times expressed in the strongest terms their Resolution to oppose all settlements thereon as a manifest violation of their rights.[18]

On December 2, 1761 King George III approved a draft of instructions to the Governors of Nova Scotia, New Hampshire, New York, Virginia, North Carolina, South Carolina and Georgia that had been prepared by the Lords of Trade. These instructions declared that the peace and security of the colonies and plantations in North America depended upon the maintenance of friendly relations with the tribes of Indians bordering upon such settlements, referred to the many complaints that had been presented by the Indians indicating that repeated royal instructions against unfair dealings with the natives had not been followed, re-asserted the intention of the Crown to protect the Indians in their just rights and possessions, commanded those in authority in the several colonies and provinces not to pass any further grants of lands within areas that had been reserved for the Indians, and directed that proceedings be taken for the cancellation of any fraudulent or unauthorized purchases of lands.

These instructions required that applications for the purchase of lands must be presented to the governor of a colony or province who would transmit them to the Board of Trade, upon whose report the King would take appropriate action. Thus the purchase of land from the Indians was taken out of the control of the colonies and placed in the hands of the British authorities. Subsequent to 1755 the military protection of the colonies from the Indians and the management of the political phases of Indian administration had been largely assumed by the Empire, now the control of land purchases became one of the functions of the British Imperial Government. Future colonization in the British American colonies was to be regulated by the home government. Thus the land settlement policies of colonial organizations were suspended. The Governor and Council of Virginia were compelled to refuse the renewal of an important land cession. Officers and soldiers of the Virginia militia, who had enlisted in the campaign against the Indians in 1754 and who had been granted the right to enter claims for land within the Ohio river valley claimed by Virginia, were now denied the right to secure lands in return for military services.

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[18] Thomas article in 18th Ann. Rep. Bureau Amer. Eth., p. 555.

The Virginians were particularly affected by these British policies because of the immense extent of the area that was claimed north and west of the Ohio river from which they hoped to derive great benefits. The British policies were largely in line with the views of Sir William Johnson who wielded a great influence as to Indian matters both in New York and in Great Britain. Although disappointed by the policies adopted by the British Government, the colonists were not filled with despair as to the future. The victory of the British in the French and Indian War assured the colonists that British influence was to be ascendant in the Ohio and Illinois country and the Mississippi Company was founded on June 3, 1763, chiefly by Virginians, with a view to obtaining a grant from the British Crown of 2,500,000 acres of land lying within the Ohio valley and including a large area lying north and south of the river. This was the most ambitious colonization scheme of the period, but it was by no means the only plan for the settlement of whites within the vast and fertile area acquired by the British under the Treaty of Paris.

Lord Shelburne, President of the British Board of Trade, devoted much effort to the formulation of land and trade policies for the new possessions and strongly urged action but without success. There was much division of opinion and bickering in the Board of Trade and in the British Cabinet. On September 2, 1763 Lord Shelburne resigned and the Earl of Hillsborough, with no particular training for the position nor special knowledge of American conditions, took over the duties of President on September 28, 1763, one of which duties was "to superintend the preparation of one of the most important state documents concerning America ever promulgated by the British Government."[14] Lord Shelburne's recommendations, directed largely to the pacification of the Indians, had lain on the table since August 1763, but in May the uprising of the Indians had begun under the leadership of Pontiac. During September reports had reached England as to the serious nature of the Pontiac Conspiracy. Immediate action now seemed imperative, the Board of Trade and the Privy Council finally reached the point where a decision could be made and on October 7, 1763 King George III issued a proclamation for the government of British possessions in America with special reference to the newly acquired territory of Quebec, East Florida, and West Florida. Lord Halifax, Secretary of State for the Southern Department, had taken a large part in the determination of policies as formulated by Lord Shelburne, and Halifax had stated that the purposes of the proclamation to be issued were:

1. To establish the limits of the new colonies and the additions made to Newfoundland, Nova Scotia and Georgia.
2. To declare the constitution of the new governments and the powers which the governors should have in the granting of land within the colonies.
3. To prohibit private purchases of land from Indians.
4. To declare free trade for all His Majesty's subjects with the Indians under license, security and proper regulation.
5. To empower all military officers and agents for Indian affairs, within lands reserved for Indian occupation, to seize criminals and fugitives from justice and send them for trial to some one of the old colonies or to the government from which they had fled.[15]

It had been intended that a boundary should be fixed so as to give imperial protection to the Indian lands east of the Alleghanies and to open to development lands of the upper Ohio valley on which the English had already made settlements.

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[14] Alvord, *The Mississippi Valley in British Politics,* I, p. 198.
[15] *Ibid.,* I, p. 199.

But, before action was taken in October 1763, the Indians had already begun an armed conflict and were threatening all the frontier. Events would not await the surveying of a boundary line and for the time being the Board of Trade fixed the " Appalachin Divide " as the eastern boundary of the lands reserved for Indian occupancy.[16] The change in the presidency of the Board of Trade only a month before the issuance of the proclamation, the division of opinion upon the numerous questions involved, and the necessity of hasty preparation at the end because of information as to the menace of Pontiac's Conspiracy resulted in the omission from the proclamation of many essential features, some of which had a vital bearing on future Indian problems. For instance no provision was made for the government of French settlements within the area reserved for Indian occupancy nor was any made for the punishment of crimes committed within the Indian country. The clause, intended to secure grants of land that had been made to soldiers and sailors who had served in America and were actually residing there, was so drawn as to exclude many from claiming rights that had been formally recognized. The latter failure engendered feeling against the Government. The prohibition against new settlements west of the sources of rivers flowing into the Atlantic and the requirement that all Indian traders must take out licenses from colonial governors were both extremely distasteful to many colonists.

The Board of Trade wrote the Indian superintendents Johnson and Stuart (Akin's successor) for their views. Johnson replied by urging a large increase in the force of political and commercial representatives, annual presents to the Indians, the confining of the Indian trade to a restricted number of trading posts and a regulation of prices for furs and other goods. The Board undoubtedly respected the views of Johnson but because of the expense involved in his plan a decision was reached in 1764 that the Board should not present this plan for the consideration of Parliament.[17]

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[16] *Ibid.*, I, p. 203.

[17] Beer, *British Colonial Policy, 1754-1765*, p. 259.

Pontiac's conspiracy was soon crushed and the concern of the colonists as to the power of the Indians abated. All efforts of the British Government to control trade with the Indians and to prevent unauthorized purchases of land and the establishment of settlements west of the Appalachin Mountains failed. English and Scotch traders vied with the French for the fur trade of the Ohio valley and Great Lakes region and the advance guard of settlers pushed into the rich valleys of the headwaters of the Ohio River. The stubborn resistance of the colonists to the Stamp Tax imposed by a parliamentary act of 1765 and the repeal of the same in the following year, after Rockingham succeeded Grenville as the head of the British Government, demonstrated the impracticability of organizing the Indian trade along lines that contemplated a substantial income therefrom to finance imperial military and political expenditures in America. The Grenville policy of making the colonies support the British military establishment for the defense of the colonies rapidly lost supporters in Great Britain as well as in America. The control of the British Government passed from Rockingham to the Earl of Grafton in 1767 with William Pitt as the real leader. On account of the illness of Pitt, Charles Townshend assumed direction of the Government and the so-called Townshend Acts were passed which still further estranged the American colonists.

On September 11, 1767 Lord Shelburne, who had again come to the front in the formulation of Indian policies in America, " proposed that the whole Indian establishment, with its superintendencies, deputies, and commissaries be abolished and that the colonies take charge of Indian affairs." [18] Shelburne's plan was referred to the Board of Trade where it found much favor. On January 1, 1768 Shelburne instructed Sir William Johnson to arrange for a new boundary line which should open the upper Ohio valley to settlement. On March 18, 1768 the British Cabinet approved the establishment of a new boundary for the Indian country and decided to transfer the regulation of Indian trade to the American colonies but to re-

[18] Alvord, *The Mississippi Valley in British Policies,* I, p. 346.

tain the offices of superintendents.[19] In a letter of April 15, 1768 to General Gage, commanding the British armed forces in America, Lord Hillsborough, Colonial Secretary for His Majesty's Government, expressed the purpose of withdrawing the British forces from western forts, leaving the colonies to defend themselves against the Indians, and of concentrating the imperial forces in Quebec, Nova Scotia, the Floridas and the middle colonies.[20] General Gage shared the views of Lord Hillsborough and the British Cabinet accepted their recommendations. Gage was finally instructed to demolish Fort de Chartres and Fort Pitt and to withdraw his troops from the Far West. The British Empire was to give no further encouragement to the settlement of the Ohio and Illinois country. All settlers were prohibited by a proclamation, having the force of law, from crossing the Indian boundary line, " yet the Empire was no longer to assume the duty of protecting the circumscribed territory from encroachments. This duty was transferred to the colonial governments." [21] The two Indian superintendents, Johnson and Stuart, opposed the new policy and complained especially of the greatly reduced appropriations. The colonies had no adequate political organization nor economic means for the regulation of trade and the supervision of land settlement. The withdrawal of the British Government from a situation that had developed during the previous fifteen years of attempted imperial control resulted in great confusion. In July 1774 the Iroquois complained as to the condition of trade subsequent to the withdrawal of British control.[22]

It is evident that there was a most unfortunate vacillation in British policy. This was due both to the unsettled condition of political affairs in Great Britain and to the severe criticism in America of the imperial policies. A large proportion of the colonists never approved of the British effort to control land purchases and the Indian trade. The acknowledged purpose of some British officials to derive a revenue for the Crown from such control was particularly obnoxious. Thomas Jefferson maintained that vacant lands in America were no part of the King's domain.[23] The general tendency during the period from 1755 to 1765, of the British Government to take a firmer stand as to the imperial control of colonial affairs had been dubiously regarded by many of the colonists. The successive irritating acts of His Majesty's Government in the following decade still further weakened the loyalty of his American subjects until open hostility was aroused and the stage was set for the Declaration of Independence in 1776. The extent to which the British policy regarding the control of Indian trade and the regulation of the purchase and settlement of Indian lands played a part in the alienation of the affection of the American colonists for the mother country has probably never been generally recognized.

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[19] *Ibid.*, II, p. 26.

[20] *Ibid.*, II, p. 43.

[21] *Ibid.*, II, pp. 51-55.

[22] *Ibid.*, II, p. 59.

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[23] *Ibid.*, II, p. 216.

CHAPTER II

THE AGITATION FOR THE REMOVAL OF THE INDIANS
1776-1832

The difficulties that had been experienced by the colonial governments and by the British Government in efforts to regulate trade with the Indians and to control purchases of Indian land were well known to those who were chosen in the various colonies to represent their fellow citizens in the formulation of plans for the prosecution of the war that had been precipitated by the Declaration of Independence. The separate colonies were not disposed to surrender to a common legislative body any control over matters that they considered properly subject to colonial determination but they recognized the need for the assumption by some authority of the functions that had previously been exercised by the British Government with respect to Indians living outside of the areas under the full control of colonial governments. They had learned by sad experience that the regulation of Indian trade required concerted action.

With this knowledge of conditions those who prepared the Articles of Confederation that were adopted November 15, 1777 inserted a clause reading:

> The United States in Congress assembled shall have the sole and exclusive right and power of * * * regulating the trade and managing all affairs with the Indians not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated.

In view of the strained relations between the Indians and the whites, as evidenced by the Cherokee attacks upon the Watauga settlement in North Carolina in 1776 and the wanton murder of settlers in the Wyoming Valley of Pennsylvania in July 1778, it is difficult to understand an agreement in the treaty of September 17, 1778 (7 Stat. 14) between the United States and the Delaware nation, then living in western Pennsylvania and eastern Ohio, that arrangements might later be made for the inclusion of an Indian state in the Confederation that had been formed the previous year. This treaty was negotiated at a time of great danger of Indian attacks and as a means of insuring the neutrality, if not the assistance, of a tribe that had shown sympathy with the British at the beginning of the Revolutionary War. That this suggestion of an Indian confederation with the thirteen states then fighting for their independence was made in good faith finds some corroboration in the fact that when a treaty was negotiated by different commissioners with the Cherokee of Georgia, seven years later, on November 28, 1785 (7 Stat. 20) a provision was inserted in article 12 that the Cherokee should have a right to send a deputy of their own choice to Congress whenever they should think fit. However, it is probable that these agreements were inserted at the request of one of more educated members of the Delaware and Cherokee tribes and that such provisions represented the aspirations of mixed-blood Christian Indians rather than the well-considered convictions of the governmental commissioners who were acting for the United States. The withdrawal of the Indians from the vicinity of white settlements, either of their own free will or as a result of pressure from the governmental authorities, was almost universally desired by the whites. In fact a gradual removal of the Indians westward had been in progress throughout the colonial period and in all probability the great majority of the whites believed that the process would continue.

Yet experience had taught that the procedure must be an orderly one and, under a proclamation issued by the authority of the Confederation on September 22, 1783, all persons were prohibited:

> from making settlements on land inhabited or claimed by Indians without the limits or jurisdiction of any particular State, and from purchasing or receiving any gift or cession of such lands or claims without the express authority and direction of the United States in Congress assembled.

It must be noted that the above prohibition was not limited to lands in the actual use and possession of the Indians but also covered lands " claimed by Indians."

Uncertainty as to the boundaries of the English colonies, arising from ambiguous and conflicting grants from the home Government, had seriously interfered with unity of purpose on the part of the colonies before the Declaration of Independence. Virginia claimed land north of the Ohio River to Lake Superior and west to the Mississippi. Connecticut claimed a strip between the forty-first and forty-second parallels of latitude in western Pennsylvania and from the western border of Pennsylvania to the Mississippi. Massachusetts claimed the western part of New York and a strip about one hundred miles in width north of the Connecticut strip and west from the Detroit river to the Mississippi. New York, relying upon agreements with the Iroquois Indians who claimed the Ohio river valley south beyond the northern boundary of Kentucky and westward toward the Mississippi, asserted her right to land claimed by Massachusetts, Connecticut and Virginia. However, in 1781 New York and Connecticut ceded their claims to every thing outside their existing borders to the Confederation of States, with the reservation by Connecticut of the right of ownership of the land in a relatively small area in northern Ohio. In 1784 Virginia ceded her claims to the vast area north of the Ohio, with the reservation of certain military lands, and in 1785 Massachusetts ceded all of her claims except as to ownership rights to land in western New York. These cessions made possible the organization of the Northwest Territory and the control by the Confederation of Indian relationships in the area north of the Ohio and west to the Mississippi, which had been relinquished by Great Britain under treaty of January 14, 1784.

The Ordinance of 1787, providing for the government of the Northwest Territory, declared in article three that:

> The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress.

By a treaty of January 21, 1785 (7 Stat. 16) the Wyandot, Delaware, Chippewa, and Ottawa nations of Indians, and by one of January 31, 1786 (7 Stat. 26) the Shawano (Shawnee) nation, all living within the area that was later organized as the Northwest Territory, acknowledge that the United States was the sole and absolute sovereign of all the territory ceded by Great Britain in 1784. This language, undoubtedly inserted with deliberation by the representatives of the United States, affords clear evidence of the position the central government proposed to maintain as to the title to lands within the United States that might be occupied by Indians. It amounted to an assertion that the United States had succeeded to all the rights formerly claimed and exercised by Great Britain. A similar assertion of sovereignty and control was made in Article III of a treaty of January 9, 1789 (7 Stat. 29) negotiated by Arthur St. Clair, Governor of the Territory Northwest of the Ohio, with the Wyandot, Delaware, Ottawa, Chippewa, Potawatomi and Sauk nations in which the United States quitclaimed certain lands to the Indians to live and hunt upon, but forbade the sale of such lands except to the United States. Here was a clear indication of the occupancy theory of Indian possession that was later accepted by the United States Supreme Court.

The Federal Constitution that went into effect on March 4, 1789 was less specific regarding the power of the central government with respect to Indian relationships than were the Articles of Confederation. In fact the only words in the Constitution that specifically provided for the management of Indian Affairs are found in Section 8 of Article I which enumerates the powers of Congress. One clause in this section reads:

> To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Section 2 of Article II, in defining the duties of the President said: " He shall have power, by and with the advice of the Senate, to make treaties, provided two-thirds of the Senators present concur," and the last sentence of Section 8 of Article I, enumerating the powers of Congress, gave this body authority:

> To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

In the three brief provisions cited above will be found all the authority of the Federal Government to deal with Indian Affairs. It will be noted that the Constitution specifically refers only to trade with the Indians and has no counterpart of the clause in the Articles of Confederation which read: "and managing all affairs with the Indians not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated." Yet the Constitution has been interpreted as conferring upon Congress almost unlimited control over Indian Affairs. The development of this most extensive and minute control by Congress over the Indians and their property affords one of the striking illustrations of the doctrine of implied powers conferred by the Constitution. The exercise of such implied powers by Congress was assumed gradually and apparently only because of a conviction that such extension was essential to the welfare of the Indians themselves.

During the War for Independence the Cherokee Indians in Georgia had allied themselves with Great Britain and when a treaty of peace was finally made with them on November 28, 1785 (7 Stat. 18) they acknowledged themselves "to be under the protection of the United States of America, and of no other sovereign whatever," and by Article IX of the treaty it was stipulated that: "The United States in Congress assembled shall have the sole and exclusive right of regulating trade with the Indians, and managing all their affairs in such manner as they think proper." This was substantially the language used in the Articles of Confederation. Later the citizens of Georgia and North Carolina protested that the Indians were allowed too much territory under this treaty and the Indians complained of the encroachments of the whites. Unquestionably the requirement of Article V of the treaty that no white man should settle within the lands reserved for the Cherokee, as well as a later proclamation forbidding unauthorized intrusion into the Cherokee country, were ignored and in 1789 Secretary of War Knox, who had charge of Indian Affairs under authority of the act of August 7, 1789 (1 Stat. 49), characterized these encroachments as a " disgraceful violation " of the treaty of Hopewell.[1] The Indians retaliated with hostile incursions into white settlements. Another attempt to secure peace resulted in the treaty of July 22, 1791 (7 Stat. 39), made on the banks of the Holston River, near the mouth of the French Broad. This treaty was followed by another of June 26 1794 (7 Stat. 43) and again by one of October 2, 1798 (7 Stat. 62) both supplemental to the Holston treaty and directed to a removal of grounds for dissatisfaction. However the Indians continued to complain and in 1797 the legislature of Tennessee had remonstrated to Congress that the previous treaties were subversive of vested rights of the State and of individual citizens.

Even while the Revolutionary War was in progress adventurous men from the Atlantic States were penetrating the unsettled lands west of the Alleghany Mountains from Lake Ontario south to the headwaters of the Tennessee River, negotiating with the Indians for their right of occupancy, or taking possession without the formality of purchase. The close of the war brought an increased immigration into the valleys of the Ohio and its tributaries. The relatively peaceful relationships with the Indians that had obtained from the late years of the Revolutionary period to the time that the adoption of the Constitution was under consideration were not destined to continue. The very year in which the Constitution went into effect, an Indian war flamed out in the Northwest Territory and in 1790 and 1791 the Indians were successful in three rather important battles with American forces. Not until 1795 were the natives finally subdued by General Anthony Wayne. So great was the influx of settlers into the trans-Appalachin country that areas were segregated and admitted into the Union as States in rapid succession, Kentucky in 1792, Tennessee in 1796, Ohio in 1802, Michigan in 1805.

Thoroughly crushed by the military operations of Mad Anthony Wayne, the Indians of the Northwest Territory submitted to the appropriation of their former extensive holdings and accepted greatly reduced areas or removed westward and northward to prairies or wildernesses not yet overrun by the advancing swarm of Caucasians. But seeds of discontent and resentment had been sown in a thousand fields of distrust and misunderstanding and these were bound to bring forth an ultimate harvest of physical encounter and bloodshed. The establishment of amicable relationships between the two races in the midst of such a clash of personal interests was beyond the power of the leaders of either race, clearly as they may have recognized the desirability of such an accomplishment. The Indians were confused and discouraged by the encroachments of the whites; the whites were annoyed by the indolence and intemperance of the Indians. Each race was embittered by the frequent examples of deceit and cruelty on the part of representatives of the other. Both races blindly groped for a solution of their difficulties.

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[1] American State Papers, Indian Affairs, I, p. 53.

As indicated above the closing years of the eighteenth century were marked by serious difficulties between the Cherokee Indians and the whites in Georgia and Tennessee. Finally under a compact of April 24, 1802 Georgia ceded to the United States the area from which was later formed the States of Alabama and Mississippi. In return for the relinquishment of this large area to the Federal Government, Georgia received a large payment of money and an agreement by the United States in the fourth section of Article I:

> That the United States shall, at their own expense, extinguish for the State of Georgia, as early as the same can be peaceably obtained, on reasonable terms, the Indian title * * * (to certain specified lands) * * * and that the United States shall, in the same manner, also extinguish the Indian title to all the other lands within the State of Georgia.

The steadily rising tide of dissatisfaction and enmity between the whites and the Indians occupying territory in the States south and west of Virginia must have been already well-known to Thomas Jefferson prior to his assumption of the Presidency on March 4, 1801. It is altogether probable that after the cession by Georgia in 1802 and the agreement of the United States to extinguish the Indian title within the State of Georgia, that Jefferson gave serious consideration to the formulation of plans for satisfying the claims of the Indians and opening to white settlement the rich agricultural lands of Georgia and the Mississippi Territory.

The unexpected acquisition of a vast unsettled area west of the Mississippi River known as Louisiana provided a possible means of settling this most harassing controversy. It is well-known that when negotiations with Napoleon were first conceived by Jefferson he had in mind no more extensive program than the acquirement of New Orleans and assurance of the use of the Mississippi River for American trade. The suggestion that all of the vast domain of Louisiana be transferred to the United States came from Napoleon. The treaty of cession was signed on April 30, 1803, and it is probable that some time subesquent to that date the idea of removing Indians west of the Mississippi as the solution of the troublesome problem occurred to Jefferson yet there are claims that the idea was not original with Jefferson.[2] It is quite possible that the idea occurred to more than one individual independently. Naturally a suggestion of this character from the President would carry much weight and the proposal soon aroused ardent discussion among the Indians and especially among the Cherokees.

The Lower Cherokee, living in central Georgia, were largely hunters and were inclined to accept rather willingly the suggestion of removal to an area where their favorite manner of securing a livelihood could be enjoyed more freely than in Georgia where settlers were ever crowding closer in upon them. However, the Upper Cherokee, occupying lands to the north of the Lower Cherokees in Georgia, North Carolina and Tennessee, and a part of Mississippi Territory, had to a considerable extent adopted the customs of their white neighbors, had established settled homes and were engaged to quite an extent in agricultural pursuits. These Upper Cherokee did not receive

[2] Abel, *Indian Consolidation West of the Mississippi*, p. 244.

with even a small degree of satisfaction the suggestion of removal to a distant land beyond the Mississippi River. In fact the question of removal to the west may have been considerably discussed among the Cherokee for several years prior to 1803, for some of the Indians, dissatisfied with the terms of the treaty of Hopewell, concluded in 1785, had moved west of the Mississippi to lands then held by Spain, which lands were ceded back to France in the year 1800.[3]

Subsequent to the suggestion by President Jefferson in July 1803 [4] for the removal of the Indians on a large scale to locations west of the Mississippi River, a bill authorizing removal was passed by the Senate but failed in the House of Representatives. However, the project continued to be of general interest and an act providing for the government of the newly acquired Louisiana Territory, as approved March 26, 1804 (2 Stat. 277) by President Jefferson, provided in section 15 that:

> The President of the United States is hereby authorized to stipulate with any Indian tribes owning lands on the East side of the Mississippi and residing thereon, for an exchange of lands, the property of the United States, on the west side of the Mississippi, in case the said tribes shall remove and settle thereon, but in such stipulation the tribes shall acknowledge themselves to be under the protection of the United States, and shall agree that they will not hold any treaty with any foreign power, individual or state, or with the individuals of any state; and that they will not sell or dispose of said lands, or any part thereof, to any foreign power, except the United States, nor to the subjects or citizens of any other sovereign power, nor to the citizens of the United States.

That the relations between whites and Indians in the northern States were far from satisfactory during this period and that the condition of some of the tribes north of the Ohio River was becoming desperate is shown by the language of treaties made with them. A treaty of August 13, 1803 (7 Stat. 78) with the

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[3] *The Cherokee Nation,* Royce in Ann. Rep. Bureau Amer. Ethnology, 1883-1884, p. 203 (Washington, Government Printing Office); Parker, *The Cherokee Nation* (New York, Grafton Press, 1907), p. 12.

[4] *The Cherokee Nation,* Royce, Ann. Rep. Bur. Eth., 1883-1884, pp. 202, 215. For questioning of date see Abel, *Indian Consolidation,* p. 241.

Kaskaskia, providing for a cession of land and compensation from the United States, declared in Article I that the several tribes of Illinois, who had, from unfortunate circumstances, been reduced to a very small number and consolidated under the name of Kaskaskia, were desirous of obtaining the means of improvement in civilized life and " for more certain and effectual support of their women and children." Article 3 of the treaty read:

> The United States will take the Kaskaskia tribe under their immediate protection and patronage, and will afford them a protection as effectual against the other Indian tribes and against all other persons whatever as is enjoyed by their own citizens.

That even at this early time the natives were largely dependent upon the whites for the very necessities of life is shown by Article 9 of a treaty of November 3, 1804 (7 Stat. 86) between the United States and the Sauk and Fox Indians which declared that:

> In order to put a stop to the abuses and impositions which are practiced upon the said tribes by the private traders, the United States will at a convenient time establish a trading house or factory where the individuals of the said tribes can be supplied with goods at a more reasonable rate than they have been accustomed to procure them.

Jefferson does not seem to have been disposed to urge a removal and in a letter of instructions to General William Henry Harrison dated June 21, 1804, the Department of War made it clear that it was not desired that any agreement with the Delaware and other Indians in the Northwest Territory regarding an exchange of lands should be made until more information regarding existing claims to lands in Louisiana was available and the claims of the Indians to lands in the Northwest Territory were better defined so that if an exchange were effected there might not arise disputes at a later time as to the ownership of lands in either Louisiana or the Northwest Territory.[5] Harrison was cautioned that settlements by Indians on

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[5] Abel, *Indian Consolidation West of Mississippi,* p. 251.

" the western side of the Mississippi without special permission from the Government of the United States " would not be permitted. That some of the Indians were not averse to, and possibly anxious for removal is indicated by the following words in the letter to Harrison:

> In the meantime it may be proper to inform such of the Indians as shall discover a wish to remove into Louisiana, that as soon as they shall have settled the limits of their present possessions with their Neighbors, so as to prevent any dispute hereafter in case of an exchange, and the Government of the United States shall have ascertained the just claims of the several Indian Nations, and others to lands in Louisiana, there will be no objection on the part of the United States to exchanging such lands with said Indians, West of the Mississippi, for lands east of that river as shall be mutually agreed on; but it should be understood that they cannot receive lands immediately on the Mississippi unless they go some distance above the mouth of the Missouri. It is probable however the U. S. will be able to accommodate them with lands on some of the large branches of the Missouri or on the western branches of the Mississippi, not very far above the mouth of the Missouri.

The sincerity of motive behind this letter and of discussions of President Jefferson and representatives of the War Department with the Chickasaw in 1805 and with the Choctaw and Cherokee in 1808 has been questioned but it is doubtful that suggestions of duplicity on the part of the government officials are justified. For many years there had been a great amount of suspicion and conflict among the Indians with frequent quarrels between the tribes and even between groups in the same tribe. In 1808 representatives of the Upper Cherokee went to Washington to seek an adjustment of their controversies with the Lower Cherokee and in January 1909 delegates from both factions visited Washington, the Upper Cherokee to press their claim for citizenship and permanent residence in Georgia and Tennessee, the Lower in a mood to accept removal west of the Mississippi on satisfactory terms. By treaties of October 25, 1805 (7 Stat. 93) and January 7, 1806 (7 Stat. 101) substantial areas of Cherokee lands in Kentucky, Tennessee, and Alabama had been ceded but in neither had the Cherokee agreed to removal and it has been alleged that unethical methods were used in inducing the chiefs to agree to these cessions.[6] By letter of January 9, 1809 Jefferson authorized a deputation of the Lower Cherokee to visit the area west of the Mississippi at federal expense to decide as to its fitness for their future home.[7] This delegation later reported favorably upon removal to such location but the Upper Cherokee who were more advanced in habits of settled life and had largely given up the hunting life strenuously opposed the suggested removal. About this time a Senate committee reported favorably upon the proposed removal but admitted that it could be carried out only with the consent of the Indians. In the House of Representatives the Resolution favoring removal was successfully blocked.

On March 4, 1809 James Madison became President and from that time interest in removal seemed to wane. In fact a rather definite opposition to removal on a large scale at a single time developed.[8] This apathy toward a removal on a large scale apparently resulted partly from reports of sanguinary conflict between members of the tribes who had already removed to the Arkansas Valley. The difficulty of furnishing funds for a general removal also played a prominent part in Madison's policy. During the years following 1809 many Indians actually migrated to the west side of the Mississippi as families or in small groups and without particular encouragement from either their tribes or from the United States Government. No definite tracts were assigned to them and they settled wherever they could find room west of the Mississippi. The majority of such emigrants are said to have gone from the Upper Cherokee branch of the tribe. This seems to controvert the assumption that the removal policy found almost its entire support among the whites. Part of the Shawnee and of the Delaware nations of the Northwest Territory, under a permission given on January, 1793 by the Spanish government, which then controlled the area west of the Mississippi, had settled on lands near Cape Girardeau in territory that later became a part of the State of

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[6] Parker, *The Cherokee Indians* (New York, Grafton Press, 1907). See *Cherokee Nation*, Royce, Ann. Rep. Bur. Amer. Eth., 1883-84, pp. 191, 192.

[7] *Ibid.*, p. 215.

[8] Abel, *Indian Consolidation west of the Mississippi*, p. 255.

Missouri. They remained there until 1815.[9] Evidently there were individuals and groups in many tribes who were dissatisfied with conditions in the more settled communities and desirous of removing to a land of more primitive life. The War of 1812 with Great Britain naturally diverted attention from an internal problem such as the removal of Indians to a new location, but the close of the war was followed by a rapid expansion of settlements west of the Appalachin Mountains and the development of a strong agitation on the part of the settlers for a removal of the Indians from proximity to their settlements.

James Monroe, who had been Secretary of War and Secretary of State under President Madison, became President on March 4, 1817. He selected John C. Calhoun as his Secretary of War. As the new impulse toward the removal of Indians coincides with the introduction of Calhoun into the office of Secretary of War it seems fair to assume that the movement was deliberately directed by Calhoun and his virile assistants, General Andrew Jackson in the South and Governor Lewis Cass in the Northwest Territory. Under date of July 8, 1817 (7 Stat. 156) General Jackson and Governor McMinn of Tennessee concluded a treaty with the Lower Cherokee which contemplated the removal of the greater part of these Indians west of the Mississippi; and on October 3, 1818 (7 Stat. 188) Lewis Cass and two associates signed a treaty with the Delaware nation by which the latter ceded to the United States all their lands in Indiana and agreed to remove west of the Mississippi River. A similar agreement for removal to former Osage lands was made by the Kickapoo of Illinois on July 20, 1819 (7 Stat. 200). By a treaty of February 27, 1819 (7 Stat. 195) the Cherokee Nation ceded to the United States an area equal to the proportion that those who had removed to Arkansas were entitled to hold of the ancestral lands of the tribe. On October 18, 1820 (7 Stat. 210) the Choctaw agreed with General Jackson and General Thomas Hinds of Mississippi to a removal to lands beyond the Mississippi; and by an agreement of January 8, 1821 (7 Stat. 215) with Forney of North Carolina and Meriwether of Georgia, as United States Commissioners, the Creeks ceded the greater part of their eastern lands with a view to removal west of the Mississippi.

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[9] See Treaty of October 26, 1832 (7 Stat. 397).

It has been estimated that 2,000 of the Cherokee from Georgia and adjacent States had removed to Arkansas prior to February 17, 1816,[10] and in February 1819 Governor McMinn of Tennessee reported that over 5,000 of the Cherokee had already emigrated or expressed their willingness to do so by enrollment as provided in the treaty of 1817.[11] However, the Cherokee represented to Washington authorities that the number of emigrants did not exceed 3,500 and that more than 12,000 Cherokee desired to remain in the east. The question of removal divided both the Cherokee and the Creeks into groups between which there ultimately developed bitter animosities that were destined to last for many years after the greater part of all groups had removed to Indian Territory. The citizens of Georgia and Tennessee continued to agitate the question of removal and the Federal Government continued its efforts to adjust the controversy. State and national politics, as well as inter-tribal schemes and machinations, clouded the issue. Another complication arose when it was found that within the area set aside for the Indians on the Arkansas River, settlers had claims. By a treaty of January 20, 1825 (7 Stat. 234) with the Choctaw a new eastern boundary for their territory was fixed as the west line of Arkansas. Under a treaty of February 12, 1825 (7 Stat. 237), made at Indian Springs, Georgia, the Creeks ceded additional lands and agreed to emigrate before September 1, 1826.

The Monroe administration had been characterized throughout by an unusually vigorous Indian policy. One may question the soundness of the premises upon which this policy was predicated, or question the methods pursued in carrying it out; but it cannot be denied that the steps taken were generally consistent and intelligently directed toward an effort to adjust permanently the relations between the white and Indian inhabitants of the nation. For more than two hundred years the Anglo-Saxon had been in contact with the American Indian; hundreds of agreements, laws and treaties had been devised and adopted to regulate relations between the races and to remove the cause of friction. Certain tribes, either upon their own request or at the suggestion of government officials, had removed repeatedly from place to place; efforts to afford them hunting grounds near settled communities had failed and the policy of furnishing them with agricultural tools, blacksmiths and millers, so that they might provide their own subsistence as farmers had, generally speaking, met with little success. As their official terms drew to a close President Monroe and Secretary of War Calhoun formulated a definite statement of what they conceived to be the proper policy with respect to Indian affairs and in a message of January 27, 1825 to Congress President Monroe wrote:[12]

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[10] Foreman, *Indians and Pioneers* (New Haven, Yale Uiversity Press, 1930), p. 43.

[11] Royce, *The Cherokee Nation,* Ann. Rep. Bur. Amer. Eth., 1883-84, pp. 218, 227, 228.

> Being deeply impressed with the opinion, that the removal of the Indian tribes from the lands which they now occpy within the limits of the several States and Territories, to the country lying westward and northward thereof, within our own acknowledged boundaries, is of very high importance to our Union, and may be accomplished on conditions, and in a manner, to promote the interest and happiness of those tribes, the attention has long been drawn, with great solicitude, to the object. For the removal of the tribes within the State of Georgia, the motive has been peculiarly strong, arising from the compact with that State, whereby the United States are bound to extinguish the Indian title to the lands within it, whenever it may be done peaceably and on reasonable conditions. In the fulfilment of this compact I have thought that the United States should act with a generous spirit, that they should omit nothing which should comport with a liberal construction of the instrument, and likewise be in accordance with the just rights of these tribes. From the view which I have taken of the subject, I am satisfied that, in the discharge of those important duties, in regard to both the parties alluded to, the United States will have to encounter no conflicting interests with either; on the contrary,

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[12] Schoolcraft, *History of Indian Tribes,* VI, p. 407; Richardson, *Messages and Papers of the Presidents,* II, p. 849.

> that the removal of the tribes, from the territory which they now inhabit, to that which was designated in the message at the commencement of the session, which would accomplish the object for Georgia, under a well digested plan for their government and civilization, which should be agreeable to themselves, would not only shield them from impending ruin, but promote their welfare and happiness. Experience has clearly demonstrated, that in their present state, it is impossible to incorporate them, in such masses, in any form whatever, into our system. It has also demonstrated, with equal certainty, that, without a timely anticipation of, and provision against, the dangers to which they are exposed, under causes which it will be difficult, if not impossible, to control, their degradation and extermination will be inevitable.

Monroe then pointed out the necessity of providing the Indians with adequate lands, a secure title and a system of internal government. He transmitted an estimate by the Secretary of War of all the lands held by the Indians, the number of Indians, and the conditions under which other Indian lands might be acquired. He said he believed the Indians could be induced to agree to removal for the protection of themselves and their posterity.

Continuing Monroe said:

> To the United States, the proposed arrangement offers many advantages in addition to those which have been already enumerated. By the establishment of such a government over these tribes, with their consent, we become, in reality their benefactors. The relation of conflicting interests, which has heretofore existed between them and our frontier settlements, will cease. There will be no more wars between them and the United States. Adopting such a government, their movement will be in harmony with us, and its good effect be felt throughout the whole extent of our territory, to the Pacific. It may fairly be presumed, that, through the agency of such a government, the condition of all the tribes inhabiting that vast region may be essentially improved; that permanent peace may be preserved with them and our commerce be much extended.

In a report of the Secretary of War, that accompanied Monroe's message, it was suggested that the Ottawa in Ohio, the Indians living in northern Indiana and Illinois and those in New York and in the lower peninsula of Michigan, about 13,150 in number, might be removed, with advantage, to the country west of Lake Michigan and north of the State of Illinois. Calhoun remarked that the climate and nature of this country west of Lake Michigan was more favorable to the habits of these Indians than was the country west of the Mississippi. He referred to the settlement of the New York Indians already commenced at Green Bay in the Wisconsin territory and to the relationship of tribes west of Lake Michigan to those of Illinois, Indiana and Michigan. These considerations, together with the greater facility with which they could be collected in the Wisconsin area compared with the trans-Mississippi area, appeared to him to afford a strong inducement for the giving of preference to the area west of Lake Michigan. He suggested a gradual removal of these Indians. Calhoun referred to a stipulation in a treaty with the Quapaw that provided for their removal and assumed that there would be no attempt to remove about 3,000 Indians who comprised the remnants of various tribes still living in Maine, Massachusetts, Connecticut, Rhode Island, Virginia and South Carolina. He thought about 1,300 Indians, the remnants of tribes once living in Louisiana, could be easily induced to remove. Deducting the 1,300 in Louisiana, the 3,000 in the New England States, the 13,000 in New York, Ohio, Michigan, Indiana, and Illinois above described and the 700 Quapaw from the assumed total population of 97,000 east of the Mississippi, Calhoun reached the conclusion that about 79,000 Indians would need to be removed to territory west of the State of Missouri and the Territory of Arkansas. Of these he estimated about 54,000 were Cherokee, Chickasaw, Choctaw and Creeks, living chiefly in North Carolina, Georgia, Tennessee, Alabama and Mississippi; 5,000 were Seminole and remnants of other tribes living in Florida; about 3,000 were Wyandot, Shawnee, Seneca, Delaware, Kaskaskia, Miami and Eel Rivers in Ohio and in middle and southern Indiana and Illinois; and the remaining number, about 17,000, were Delaware, Kickapoo, Shawnee, Wea, Iowa, Piankashaw, Cherokee, Quapaw and Osage living in Missouri and Arkansas Territory.

Calhoun believed that there would be no difficulty in securing the consent of the tribes residing in Missouri, Arkansas, Illinois, Indiana and Ohio to remove west of the Missouri River. He conceded that a relatively large price would need to be paid them for their lands as some of them, particularly those in Ohio, had " made some advances in civilization and considerable improvements on their lands." He recommended a gradual removal of these Indians. Calhoun discussed at some length the proposed removal of the Cherokee, Choctaw, Chickasaw, Creeks and Seminole and recommended a total appropriation of $95,000 for the carrying out of his plans for removal. He failed signally in his estimate of the magnitude of the task to which he wished to commit the United States government. He ended this part of his report with the following words:

> I cannot, however, conclude without remarking, that no arrangement ought to be made which does not regard the interest of the Indians as well as our own; and that to protect the interest of the former, decisive measures ought to be adopted, to prevent the hostility which must, almost necessarily, take place if left to themselves, among tribes hastily brought together, of discordant character; and many of which are actuated by feelings far from being friendly toward each other."

Calhoun then referred to the " schools that have been established, for the most part, by religious societies " and asked for the continuance of such schools; for the most solemn assurance that the new home would be permanently theirs; and for a system of gradually uniting the tribes under a government of their own, modeled after the American Government.

In his message of January 27, 1825 President Monroe referred to the pending negotiations with the Creeks with an expression of hope for a satisfactory conclusion. The treaty signed on February 12, 1825 (7 Stat. 237) was promptly forwarded by Commissioners Campbell and Meriwether to the Secretary of War but not until March 3, 1825 did Monroe transmit the treaty to the Senate for consideration. The treaty was quickly consented to by the Senate and proclaimed by the new President, John Quincy Adams, on March 7, 1825. John Crowell, the agent to the Cherokee, had filed with the Indian

Division in the War Department a written protest regarding the methods by which the treaty had been obtained and in the papers accompanying the treaty to Washington was a plea of the McIntosh party, which was responsible for the signing of the treaty on the part of the Indians, that this party should be protected from the non-removal Creeks. This plea in itself should have afforded sufficient warning to the Department that all was not right. However, so anxious was the administration to conclude the matter before its close that reasonable precaution was not exercised or else suggestions as to unfair treatment of the Indians were deliberately rejected. Evidently the Creeks had been led to believe that the authorities at Washington would protect them from over-reaching tactics by those who sympathized too strongly with the Georgians. The Upper Creeks learned with " sorrow and consternation " of the ratification of the treaty made at Indian Springs. Their chagrin and disappointment quickly gave place to anger and defiance. They refused absolutely to accord any respect to the treaty, denounced it as fraudulent and prepared to carry out a recently enacted law of their nation imposing the death penalty upon anyone who should undertake to join in a cession of their lands without due authority from the nation. In furtherance of plans for removal Governor Troup of Georgia sought and obtained the consent to a survey from Principal Chief William McIntosh, who had signed the Indian Springs treaty. Feeling was already strong against McIntosh and when it was learned that he had given his consent to the proposed survey, which they interpreted as a primary move in a plan to force their removal, a group of non-removal Creeks surrounded his house on April 30, 1825 and deliberately shot him. Their defense was that McIntosh had incurred the death penalty under the Creek national law.

The killing of McIntosh and other leaders threw the whole tribe into great excitement and because of charges, which the facts seemed to support in some degree, that McIntosh and others had been bribed to betray their fellow tribesmen, true friends of the Indians made vehement protest against the treaty of Indian Springs. The Creek controversy had been precipitated in a time of bitter political dissension among the whites. Andrew Jackson and his friends felt that he had been unjustly deprived of the presidency, through what they called the duplicity of Henry Clay and others. Unjust charges and caustic recriminations were being hurled about. From the time that Adams was chosen President by the House of Representatives over Jackson, who had the largest number of votes of any candidate on the first ballot of the House, strong forces were operating to discredit the Adams administration.

Describing the events of this period only twenty years after their occurrence and enjoying the privilege of having known men who had taken part in them, Schoolcraft remarks:[13]

> Mr. Adams exerted himself to bring the vexed question to an equitable close; the Creek nation and the people of the Union being much agitated by its discussion, and the friends of the Indians apprehensive that some great injustice was about to be done them. Georgia having demanded their expulsion, the Creeks appealed to the Government, and, early in the year 1826, sent a large and respectable delegation to Washington, to represent their cause. Negotiations were renewed, and resulted in the formation of the important treaty, signed January 24, 1826, the first article of which abrogates the prior treaty of February 12, 1825, and declares every clause thereof 'null and void, to every intent and purpose whatsoever.' By this treaty the Creeks ceded large tracts of their land in Georgia, and agreed to remove to the West. * * * The removal policy was thus sustained. * * * The treaty of January 24, 1826, was the first effective step taken towards the transference of the Indian tribes to the West. * * * * It is impossible to conceive, unless by a perusal of the numerous public documents printed at that period, how numerous and complicated were the difficulties surrounding this subject. Some of the tribes, more advanced in civilization than the rest, regarded it as an endeavor to drive them back into barbarism, and the moral tone of the community also sympathized with this view. The diurnal press, as well as the critical reviews, asserted that the Indian question had reached a point where it became necessary to pause, and ponder on the duties which the nation owed to the tribes, who, though at that time acting under delusive impulses, should be regarded with deeper sympathy, not only as our predecessors in the country, but also as individuals in whom Christianity felt a deep interest. * * * At this time, it

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[13] Schoolcraft, *History of Indian Tribes,* VI, p. 418.

appeared that nothing but the removal of the tribes from the jurisdiction of the several States to a separate territory, where they would be free from molestation, could avert their entire annihilation at no very distant period. Portions of the Cherokees seem to have realized their true condition as early as the year 1809, when they obtained Mr. Jefferson's sanction to their proposal, which was subsequently embodied in the treaty negotiated in 1816. From a clause of the treaty with the Shawnees, negotiated by General Clark in 1825, we learn that a small fragment of that tribe had crossed the Mississippi into Upper Louisiana, and there located themselves on a tract of land twenty-five miles square, granted to them by Governor Carondolet, as early as 1795. This movement was at first merely precautionary, and intended to furnish an outlet for their restless population west of the Mississippi, was followed by several other tribes at a later date, and at various epochs it became a portion of the tribal policy of the Choctaws, and Chickasaws, the majority of the Cherokees, and finally of the Creeks. Yet the dispersed hunter tribes, living on large reservations in the western and northern States, east of the Mississippi, regarded the measure with total aversion. They clung with tenacity to the land of their forefathers, in those latitudes, where the varying climate, and the happy alternation of spring, summer, autumn, and winter, gave a piquancy to the enjoyment of life. The chase was the poetry of their existence, war the true path to honor, and the traditions and reminiscences of their forefathers the proper intellectual food of the Indian mind. Books were for scholars, and labor for slaves. This was Indian philosophy.

Schoolcraft referred to the numerous internal wars and strifes among the Indians and declared that these wars and feuds:[14]

had been one of the principal causes of their decline, and, in some instances of their utter destruction. These wars, which had no limits to their fury, and were waged without any ostensible object, began before America was discovered, and continued, at fitful intervals, throughout every period of aboriginal history. They have, in fact, exercised a more baneful influence on the posterity of the Indian race, than any or all other causes combined, with the single exception of their passionate craving for ardent spirits. Efforts were frequently made to put a stop to these intestine wars, and as frequently defeated; but after the close of the War of 1812 they were again vigorously resumed. Mr. Monroe made strenuous

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[14] Schoolcraft, *History of Indian Tribes,* VI, p. 421.

> efforts to enforce this policy throughout the entire eight years of his administration. * * *
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> As internal tribal wars were continually distracting the Indians, one tribe trespassing on the lands of another, and as the civilized population was, at the same time, pressing into the ceded districts, it was thought by the Government that one of the most practical methods of allaying their territorial disputes would be to establish definite boundary lines between their possessions; a method of settling their difficulties which had never occurred to the Indians.

This plan of the Government was given by Schoolcraft as the reason for the many treaties made in 1825 and subsequent years, beginning with the one made at Prairie du Chien on August 29, 1825 (7 Stat. 272) and followed by conventions at Fond du Lac on August 5, 1826 (7 Stat. 290) and Buttes des Morts on the Fox River on August 11, 1827 (7 Stat. 303).[15] The preamble of the treaty of Prairie du Chien gave intertribal warfare as the reason for the treaty.

In a report of 1825, regarding the lands west of the Missouri to which it was proposed to remove the Indians, General William Clark, Superintendent of Indian Affairs at St. Louis, wrote:[16]

> I find, from information derived from persons to be relied upon, that the country embraced in these cessions, is *wonderfully adapted to an Indian population in the first stages of civilization.* Grass is universally abundant, and the winters, in a great portion of the cession, mild enough to winter cattle, horses, and other domestic animals, to subsist themselves without care from their owners. On all creeks and rivers, there are bottoms of rich lands, easily prepared for cultivation. The country is divided into woodland and prairie—but mostly prairie, and is well watered by springs and running streams, and is convenient to salt plains, and springs of salt water, from which an inexhaustible supply can be obtained. It is also convenient to the great buffalo range, from which supplies can be obtained, until they can resort to their own flocks.

However, the charge that these lands were inferior and unfit for Indian use was evidently reiterated and in 1830 General

[15] Public Docs. of Senate, I, II, III, IV (Washington, Blair and Rives, 1840); Jedidiah Morse, Rep. to Secretary of War (New Haven, S. Converse, 1822).

[16] Schoolcraft, *History of Indian Tribes,* VI, p. 427.

Eaton, Secretary of War, during the first term of President Jackson's administration, found it necessary to defend the suitability of the lands west of the Missouri for Indian habitation and wrote:

> As it regards the inquiry relative to the soil, climate, and productions of the country, all the information that has been obtained from persons who have visited this portion of our territory, leads to the conclusion that, in nothing of these is it inferior to the country proposed to be abandoned on the east of the Mississippi. It is for the most part, an open prairie country, fertile and easy to be cultivated, with timber sufficient for all agricultural purposes, and which is vigorously and freely reproduced in the prairies when they are settled and trodden by the stock. The climate is mild and agreeable.

As early as June 1815 the question of the removal of the New York Indians to western lands under the control of the United States had been discussed with federal representatives by New York State officials. Soon thereafter the Chiefs of the Iroquois themselves advised President Madison of their desire to remove to Ohio or its vicinity so as to be near some of their friends who had already emigrated. Secretary of War Crawford advised them that their settlement in Ohio or its immediate vicinity would not be in accord with plans for consolidation and thereafter they seem to have lost interest in the proposed removal. However, David A. Ogden, who had acquired the preemptive right to lands in western New York once held by the State of Massachusetts, continued to exercise an influence toward the removal of the New York Indians so that his right might attach to the lands occupied by them. Removal was advocated in 1818 but received no encouragement from Secretary Calhoun who was desirous of consolidating all Indians in Arkansas and objected to the location of any in Ohio, Indiana or Illinois. The Stockbridges, exiles from Massachusetts, and living for some time among the Iroquois of New York, emigrated westward in 1817, expecting to settle on lands in Indiana that had previously been occupied by the Delaware. However, due to delays in their migration, the lands that the Delaware expected them to receive were sold before the arrival of the

Stockbridges and the immigrants stayed through the winter with the Shawnee in Ohio. For years afterward they were unsettled. Efforts by the Ogden interests in 1819 to secure the removal of the Seneca were unsuccessful, but eventually a large number of the Oneida Indians of New York removed to lands on the Fox River south of Green Bay, Wisconsin, which had formerly been held by the Menominee and Winnebago.

There seems to be no reason to doubt the sincere friendship of the Reverend Jedidiah Morse for Indians as individuals and as a race. As one of the leading representatives of an active missionary society, he spent many years studying their needs, coming into prominence about 1818. He conceived a plan for "Education Families" which were to constitute groups of Indians living under a community economy and under the guidance of Christian leadership which should gradually develop their capacity for individualism. He stated that he used the term "Education" rather than "Mission" so as not to offend the opposers of missions and because the phrase "Education Families" well described the purpose of these associations. He was wise in his generation. Morse sought assistance from the Federal Government from the appropriation of $10,000, first made available in 1819, for aid to private schools engaged in Indian education. Morse's project did not involve removal on any extensive scale but did require that individuals and families gather at certain points where they could cultivate land sufficiently fertile to afford a living for the groups in which the educational work was to be carried out. A certain amount of segregation from the whites was considered essential to the success of the proposed educational program. Each community was to have its own school and church and even a central school of higher education comparable to a college was planned. Morse even suggested in a report to the President the ultimate foundation of an Indian state which should be self-governing. He believed at the time (1820) that this idea was new but later learned that such a state had been suggested in the treaty made at Fort Pitt in 1778 with the Delaware.[17]

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[17] Abel, *Indian Consolidation West of Mississippi*, p. 300.

After his extensive visit to the Indian country in the Great Lakes region in 1820, Doctor Morse became enthusiastic about the fitness of Michigan and the country west of it for the carrying out of his plans for the education and Christianization of the Indians. Morse moved rapidly forward to his plan for making an Indian Territory out of the upper peninsula of Michigan and of the area west of Lake Michigan that later became Wisconsin. He advocated the reservation for the northern Indians of the entire area north of Illinois, west of Michigan and Huron Lakes and east of the Mississippi, in the same manner that lands west of Missouri were reserved for the Choctaw under the treaty of October 18, 1820 (7 Stat. 210). He estimated that more than 60,000 Indians were, or could be, concentrated in this area, " enough, when educated, to form a separate Territory, and to have a representative in Congress." In fact, Morse suggested in his report to the President that this Indian state be ultimately " admitted to all the privileges common to other territories and States, in the Union."

Jedidiah Morse was thoroughly familiar with all the proposed removals of Indians from 1818 forward and occupied a position of confidence with the representatives of many tribes. He knew of conditions at the places where the Indians had formerly lived, or were living during the period of agitation for removal. He knew of the privations and disappointments that they suffered in the course of their migrations and of the difficulties to be overcome in the new country to which they had gone or proposed to go, and, yet, this intelligent and sincere friend and adviser of the Indians was convinced that removal and consolidation was advisable for many of the Indians. While the removal of these people from their ancestral territories appears at this time to have been unnecessary and cruel, it is probable that the present generation does not give sufficient weight to the adverse conditions that surrounded the Indians at the locations from which they removed, nor do those of the twentieth century, whether Indian or white, probably appreciate how irksome to many of the nineteenth century Indians were the restrictions that accompanied the settlement of the lands surrounding their reservations.

The Baptist missionaries under the leadership of the Reverend Isaac McCoy were generally favorable to removal. McCoy was convinced that the Indians would be better off far removed from the influences and irritations flowing from their proximity to the whites. For several years following 1825 he was a strong advocate of an " Indian state." The Baptists were particularly strong in the southern and border States. However, so many of the missionaries were sympathetic with the reluctance of the Indians to leave their homes and settlements in the east as to partly justify the charge that they encouraged the Indians in procrastination and opposition to the removal policy. Members of the Society of Friends and Congregationalists, two groups whose membership was principally in northern States, were usually openly opposed to removal and their attitude was strongly reflected in Congress, especially in the House of Representatives.

James Barbour of Virginia had, on March 4, 1825, succeeded John C. Calhoun as Secretary of War. As soon as Barbour had become convinced that there had been serious irregularities in connection with the negotiation of the Indian Springs treaty, he had ordered a careful investigation; and the manner in which subsequent negotiations were conducted at the City of Washington in effecting the new treaty of January 24, 1826 (7 Stat. 286) appears to have overcome the suspicions of the non-removal Creeks and, temporarily at least, to have softened the feeling of bitterness between the Creek factions. The treaty itself provided for a visit by a deputation of five of the McIntosh party of Creeks to the lands west of the Mississippi at the expense of the United States to examine the Indian country there " not within either of the States or Territories, and not possessed by the Choctaws or Cherokees." The United States agreed to purchase for them, if it could be done on reasonable terms, the country they should select, proportioned to their numbers; and if this area could not be purchased, the President was authorized to procure another suitable area. The emigrating party were to remove within two years at the expense of the United States and subsistence was to be furnished for one year after their arrival at their new residence. Article 12 provided that possession of the area ceded by the treaty was to be yielded by the Creeks before January 1, 1827.

When the treaty of January 24, 1826 was first submitted to the Senate, the Committee on Indian Affairs recommended against consenting to it; but after Adams submitted a supplementary article of March 31, in which the Indians agreed to an additional cession, the treaty was finally ratified with only a half-dozen Senators dissenting. The opposition of the dissenters was reputed to be largely because of constitutional objection to the provision in Article I of the treaty declaring that every right and claim arising under the treaty of Indian Springs " is hereby cancelled and surrendered." The records of the consideration of the treaty in the Senate disclose that the Senators from Georgia were desirous of obtaining every possible advantage that would hasten or encourage the removal of the Indians. After the ratification Governor Troup of Georgia became especially truculent, declaring the treaty unconstitutional, and in this spirit he was stoutly supported by the Georgia legislature that convened in December 1826. The situation became so tense that on February 5, 1827[18] Adams presented the matter to Congress in a message that he himself characterized as " the most momentous " message he had ever sent. The message was referred to select committees of which Senator Benton of Missouri and Representative Everett of Massachusetts were the respective chairmen. The report of the Senate Committee supported the claims of Georgia; the House Committee upheld the Washington treaty of January 24, 1826. Throughout the Creek and Cherokee controversies the House had been the bulwark of defense for the claims of the Indians, while the Senate was disposed to espouse the cause of Georgia. However, both committees advised the purchasing of Indian lands as a means of settling the controversy. This Adams was already endeavoring to accomplish by every honorable means. Alabama likewise attacked the validity of the treaty of 1826 so far as it purported to cancel rights that Alabama claimed accrued to her under a land cession in the treaty of 1825.

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[18] Abel, *Indian Consolidation West of Mississippi,* p. 355.

Previous efforts to concentrate the Seminole in Florida had been most ill-advised and their sufferings added flames to the Creek and Cherokee conflagration. By letter of January 30, 1827 to the House Committee on Indian Affairs, Secretary Barbour reported that the Seminole Indians must either be moved to a more productive country or be supplied regularly with provisions. Adams favored removal and efforts were made to secure an agreement of the Seminole to remove to an area north of Arkansas and west of Missouri. But opposition on the part of the Indians, lack of funds, and political bickerings prevented any definite action. Pressure for removal was constantly being exerted upon the Cherokee by Georgia; and the Upper Cherokee, perceiving that one of the chief arguments for their removal rested upon allegations that they were incapable of leading a civilized life and conceiving that this argument could be successfully met by demonstrating their ability to govern themselves, decided to establish a more elaborate form of self government than they then had. Accordingly on July 4, 1827 delegates, duly elected from various districts of the Cherokee Nation, met in an assembly at New Echota, Georgia, prepared and adopted a Constitution, which in all applicable features was an almost exact copy of the Constitution of the United States. Before the end of July this Constitution, which had been referred to the various districts for consideration, was ratified by the entire Cherokee Nation. John Ross, a mixed-blood with Scotch ancestry, and a man of much ability, who had become President of the Cherokee Nation, believed with his fellow tribesmen and many friends of the Cherokee that the adoption of this Constitution heralded a new day for the Cherokee.

They were right, but the new day was to be one of new tribulations. Unexpectedly, this action by the Cherokee became the signal for a most violent attack by the Georgians and their sympathizers throughout the United States. It was represented that this action by the Cherokee was an effort to set up an independent nation within the sovereign State of Georgia. These critics of the Cherokee quoted in support of their position Section 3 of Article IV of the Federal Constitution, reading in part as follows:

> New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; * * * without the consent of the Legislatures of the States concerned as well as of the Congress.

It is probable that the leaders of the Cherokee were not so innocent in this matter as their friends in the Northern States were wont to assert and perhaps sincerely believe. It appears that the proposed assertion of a political status independent of Georgia had been under discussion for more than six months prior to the actual adoption of the Constitution of New Echota. In a report of February 20, 1827 Thomas L. McKenney, who had been sent to the Creeks and Cherokee to facilitate removal, had written to Secretary of War Barbour as follows:

> I think it much to be regretted that the idea of Sovereignty should have taken such deep hold of these people. It is not possible for them to erect themselves into a state of such independence and a separate and distinct Government, and the sooner they are enlightened on the subject I think the better. The most they can ever hope for if they retain their possessions within the States, is to hold them under the laws of the States as Citizen. * * * [19]

When the legislature of Georgia assembled in December 1827, immediate attention to the Cherokee situation was given. On December 19, 1827 resolutions were adopted to the effect that the Cherokee had no real title to their lands and advocating their eviction by force, if necessary. The Indians entered a counter protest with Congress. On December 26, 1827 the State of Georgia declared certain parts of the Cherokee country to be parts of Carroll and DeKalb Counties for purposes of criminal jurisdiction. In resolutions adopted the next day the legislature accused the Federal Government of unfaithfulness in not carrying out the agreement of 1802 to extinguish Indian titles. In the federal House of Representatives both the Judiciary Committee and the Indian Affairs Committee were instructed to inquire into the matter of a Cherokee republic and to report the action to be taken. But the whole matter resulted in talk rather than action. By letter of January 26, 1828 Governor Forsyth of Georgia protested to President Adams regarding the Constitution that the Cherokees had adopted.

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[19] Abel, *Indian Consolidation West of Mississippi,* p. 361; quotes Indian Office Letter Book, Series II, No. 3, p. 390.

As a result of the agitation the Indian appropriation bill passed in May 1828 contained an appropriation of $50,000 for carrying into effect the federal agreement of 1802 to extinguish the Indian title to lands in Georgia. Soon thereafter President Adams took steps to carry out the will of Congress for which action he was roundly abused by the friends of the Cherokee and his political opponents. Captain James Rogers, a half-blood Cherokee, as a confidential agent, and Colonel Montgomery, the Cherokee Indian agent, were assigned the duty of inducing the Indians to emigrate. They encountered suspicion and uncompromising opposition. It appears that their methods of persuasion were not always above reproach. Some of the rank and file professed a willingness to emigrate but the chiefs maintained a united front against removal, answering the Georgia claim by a pronouncement of October 13, 1828 by their General Council at New Echota.

The federal administration hesitated to take drastic action to effect the removal and the citizens of Georgia became constantly more impatient. By an act of December 28, 1828, Georgia declared that after June 1, 1830 the Cherokee country was to be subject to State jurisdiction in all respects. The national election of November 1828 had resulted in the election of Andrew Jackson, long an advocate of removal, and all parties looked forward to his inauguration as marking the beginning of a definite policy regarding The Cherokee controversy.

In general the Adams administration sought to carry out the policies that had been followed under Monroe. Numerous treaties were made with a view to composing differences between tribes and to adjusting the boundaries of Indian land.

Treaties with tribes west of the Mississippi usually contained an admission by the Indians that they recognized the supremacy, claimed the protection of the United States, and acknowledged the right of the United States to regulate all trade and intercourse with them. A treaty of May 6, 1828 (7 Stat. 311) with the Western Cherokee was directed primarily to an extinguishment of the claim of such Indians to lands within Arkansas Territory. Article 8 of this treaty offered special inducements to Cherokee yet living in Georgia or other States east of the Mississippi to remove to Indian Territory. In fact the Adams administration exerted every influence short of coercion to encourage the emigration of Indians from Georgia; but the charge, made at the time, that the conduct of Adams in this matter was influenced by personal political considerations may be dismissed as consonant neither with his character nor with the actual course pursued by him.

While the chief agitation for the removal of Indians during the Adams administration concerned those of Georgia and adjacent States, there were citizens of Ohio, Indiana and Illinois strongly in favor of the emigration of the natives from their States and the white inhabitants of the State of Missouri, to which large numbers of Indians from northern tribes had migrated prior to 1825, and the settlers in Arkansas Territory, shared the aversion of the whites in the older States to the permanent establishment of large groups of Indians within the areas where they expected to maintain their homes. Senator Benton and others urged the necessity of obtaining lands west of the Missouri from the Osage and other tribes as a new home for the Indians who had settled, or were moving about within Missouri and Arkansas, as well as others who would apparently soon move to the west. In March 1825 Thomas McKenney in charge of Indians in the War Department, instructed General Cass to confer with the tribes of the old Northwest Territory regarding removal and General William Clark of the St. Louis Agency was at the same time directed to treat with the Osage and Kansa Indians for the cessions of part of their lands as a location for the Eastern tribes.

Cass accomplished no very substantial results, and it became apparent that representations as to the desire of the Indians of the Central and Lake region to emigrate to the west were not well founded. Clark succeeded in obtaining a very large cession from the Osage in a treaty of August 10, 1825 (7 Stat. 268) and a much smaller but important cession from Kansa tribe in a treaty of August 16, 1825 (7 Stat. 270). One of the obstacles to a colonization, or consolidation, policy was now definitely removed. An immense area of lands adapted to the use of a semi-civilized people was now available beyond the western border of any established State and outside of the area that it was then thought white settlers would desire for decades, if ever. But neither Adams not Secretary of War Barbour appear to have entertained any uncompromising opinions as to the course to be pursued. In fact Barbour requested McKenney to report upon the Calhoun-Monroe plan for removal and upon the plan for incorporation in the white communities formerly suggested by Secretary of War Crawford. Before McKenney could submit his report on November 30, 1825 Barbour had indorsed the incorporation idea and submitted a plan to the President. Both Adams and Clay considered incorporation impracticable. In response to a request from the House Committee on Indian Affairs, Barbour submitted, early in 1826, a full report with recommendation for removal of individuals rather than tribes.[20] This report discloses independence of judgment and keen understanding of and sympathy with the Indians. A part of this report read:

> Missionaries are sent among them to enlighten their minds, by imbuing them with religious impressions. Schools have been established by the aid of private, as well as public donations, for the instruction of their youths. They have been persuaded to abandon the chase—to locate themselves, and become cultivators of the soil—implements of husbandry and domestic animals have been presented them, and all these things have been done, accompanied with professions of a disinterested solicitude for their happiness. Yielding to these temptations, some of them have reclaimed the forest, planted their orchards, and erected houses, not only for their abode,

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[20] Abel, *Indian Consolidation West of Mississippi,* p. 365.

> but for the administration of justice, and for religious worship. And when they have so done, *you* send *your* Agent to tell them they must surrender their country to the white man, and re-commit themselves to some new desert, and substitute as the means of their subsistence the precarious chase for the certainty of cultivation. The love of our native land is implanted in every human bosom, whether he roams the wilderness, or is found in the highest stage of civilization. * * * We have imparted this feeling to many of the tribes by our own measures. Can it be matter of surprise, that they hear, with unmixed indignation of what seems to them our ruthless purpose of expelling them from their country, thus endeared? They see that our professions are insincere—that our promises have been broken; the happiness of the Indian is a cheap sacrifice to the acquisition of new lands; and when attempted to be soothed by an assurance that the country to which we propose to send them is desirable, they emphatically ask us, what new pledges can you give us that we shall not again be exiled when it is your wish to possess these lands? It is easier to state than to answer this question. A regard to consistency, apart from every other consideration, requires a change of measures. Either let him remain and enjoy his home, or, if he is to be driven from it, abstain from cherishing illusions we mean to disappoint, and thereby make him feel more sensibly the extent of his loss.

It is possible that the warmth of argument here disclosed may have been partly a reflection of the political animosities of the time. Jackson was known as a pronounced advocate of removal and Barbour had considered it necessary to discredit completely the treaty of Indian Springs which had been negotiated by those who sympathized with the removal program. Secretary Barbour's criticisms of the treatment of the Indians are forceful and well calculated to enlist the sympathies of the reader for the natives, yet it is clear from the records of the time that many real friends of the Indians believed at that time that only through removal would the Indians be able to enjoy freedom and real happiness.

The main features of Barbour's plan were the reservation for exclusive use by the Indians of the country west of the Mississippi and beyond Missouri and Arkansas Territory and of as much as should be necessary of the area between the Mississippi and Lake Michigan and Lake Huron; removal of the Indians as individuals rather than as tribes; the establishment and maintenance by the United States of a territorial government over the area to which the Indians should be removed; the ultimate extinction of tribes, the amalgamation of all Indians with a distribution of property among the individuals; and the leaving of conditions as they were for those who did not remove. These recommendations were not entirely consistent with the Secretary's expressions of sympathy with the Indians in their objections to removal.

During his term as Secretary of War Mr. Calhoun had found the duties of administering Indian Affairs so exacting that by letter of March 11,1824, without specific authority of law but doubtless with the full approval of President Monroe, he created a separate organization in the War Department to care for Indian affairs, and placed in charge of this incipient bureau Colonel Thomas L. McKenney. Undoubtedly the creation of the Indian Division facilitated the handling of the rapidly increasing responsibilities with respect to Indians but the removal policy as crystalized by Monroe's message of February 27, 1825 and the storm of opposition that it aroused on the part of the non-removal Indians and their sympathizers focused public attention upon the whole Indian problem. The urgent need for a consistent and definite policy was recognized in the annual report of the War Department issued on November 24, 1828. In this report Peter B. Porter of New York, who had succeeded Mr. Barbour as Secretary of War declared:

> The want of system and regulation for the administration of this branch of the public service has long been severely felt, and has probably subjected the officers to whom it has been intrusted to more animadversion and censure than has fallen to the lot of any other functionaries. The different views entertained, not only by different classes of our citizens but even by the different officers acting under this Department, in regard to the leading measures of policy which ought to govern our intercourse with the Indians, have furnished fruitful sources of complaint against the Department, and often of collision between the officers themselves.

Secretary Porter then referred to a set of proposed regulations to govern Indian Affairs and continued:

> While on the subject of Indian Affairs I should feel that I did

> not discharge my whole duty, were I to neglect to call the attention of the Government to the expediency, if not absolute necessity, of clearly defining by legislative enactments, the nature of the relation by which we are to stand allied to the Indian tribes; and, especially, to prescribe what, as between them and ourselves, shall be the reciprocal rights, both of property and government, over the vast tracts of country which they claim and inhabit. * * * While some of our citizens, who are advocates of primitive and imprescriptible rights in their broadest extent, contend that these tribes are independent nations, and have the sole and exclusive right to the property and government of the territories they occupy, others consider them mere tenants at will, subject, like the buffalo of the prairies, to be hunted from their country whenever it may suit our interest or convenience to take possession of it. These views of their rights and disabilities are equally extravagant and unjust; but the misfortune is, that the intermediate line has never been drawn by the Government.

After discussing the impossibility of continuing the existing status of Indians holding large reservations within white communities, the efforts to colonize them outside of "the States and organized Territories," the setting aside of the area west of Arkansas Territory, and the tendency of missionaries to oppose the removal of Indians, Porter very significantly remarked:

> Let the lands be apportioned among families and individuals in severalty, to be held by the same tenures by which we hold ours, with perhaps some temporary and wholesome restraints on the power of alienation.

And with respect to those who should refuse to emigrate, he wrote:

> let an arrangement be made with the proper authorities of the respective States in which they are situated, for partitioning out to them, in severalty, as much of their respective reservations as shall be amply sufficient for agricultural purposes. Set apart a tract, proportioned in size to the number of Indians, to remain in common, as a refuge and provision for such as may by improvidence waste their private property; and subject them all to the municipal laws of the State in which they reside.

Three months after this report was published the Adams administration came to a close. It must be taken as the final conclusion of the Adams administration regarding Indian affairs, yet it is evident from the first paragraph above quoted from the report that there was great divergence of opinion within the Department of War itself.

When Andrew Jackson was inaugurated President on March 4, 1829, the greater part of the Cherokee, Choctaw, Chickasaw, and Creeks were still in Georgia and adjacent States and the Seminole were living in much destitution in Florida. Jackson's convictions as to removal were well-known and the South and the West expected vigorous action on the Indian question. However, many of the Indians had great confidence in his sense of fairness. Before the close of April 1829 it had become apparent to all that both Jackson and Secretary of War John H. Eaton of Tennessee were definitely committed to the policy of removal. Early in 1829 the Mississippi legislature had passed an act that purported to extend State jurisdiction over all Indian lands within the State and it appeared that the next move would be to make the Indians themselves subject to State laws in every respect. Thus Georgia, Alabama and Mississippi were in accord as to the assertion of State sovereignty over Indian lands. The leaders of the Choctaw, who were chiefly living in Mississippi, like those of the Cherokee and of the Creeks, continued to assert their ability to manage their own affairs and their legal and moral right to resist the pretensions of the States. The discovery of gold in the Cherokee lands of Georgia in 1829 sharpened the general demand for the assertion of State sovereignty over Indian lands. The division in public opinion regarding Indian removal became more pronounced in the months following the assumption of office by Jackson and the question took on more and more of the aspect of a political party contest.

In his first annual message to Congress delivered December 8, 1829, Jackson discussed the question with his usual directness, saying:[21]

> The condition and ulterior destiny of the Indian tribes within the limits of some of our States, have become subjects of much in-

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[21] Richardson, *Messages and Papers of the Presidents,* III, p. 1019.

> terest and importance. It has long been the policy of the Government, to introduce among them the arts of civilization, in the hope of gradually reclaiming them from a wandering life. This policy has, however, been coupled with another, wholly incompatible with its success. Professing a desire to civilize and settle them, we have, at the same time, lost no opportunity to purchase their lands and thrust them further into the wilderness. By this means they have not only been kept in a wandering state, but been led to look upon us as unjust and indifferent to their fate. Thus, though lavish in expenditures upon the subject, Government has constantly defeated its own policy; and the Indians, in general, receding further and further to the West, have retained their savage habits. A portion, however, of the southern tribes, having mingled much with the whites, and made some progress in the arts of civilized life, have lately attempted to erect an independent government within the limits of Georgia and Alabama. These States, claiming to be the only sovereigns within their territories, extended their laws over the Indians; which induced the latter to call upon the United States for protection. * * *

Jackson then discussed the impossibility of maintaining two sovereignties within one State, declared that if the Federal Government should aid the Indians in such a contest, it would be aiding in the destruction of the State government which was guaranteed by the Constitution and added:

> Actuated by this view of the subject, I informed the Indians inhabiting parts of Georgia and Alabama, that their attempt to establish an independent government would not be countenanced by the Executive of the United States; and advised them to emigrate beyond the Mississippi, or submit to the laws of those States.
>
> Our conduct towards these people is deeply interesting to our national character. Their present condition, contrasted with what they once were, makes a powerful appeal to our sympathies. Our ancestors found them the uncontrolled possessors of these vast regions. By persuasion and force, they have been made to retire from river to river, and from mountain to mountain, until some of the tribes have become extinct, and others have left but remnants, to preserve, for a while, their once terrible names. Surrounded by the whites, with their arts of civilization, which, by destroying the resources of the savage, doom him to weakness and decay; the fate of the Mohegan, the Narragansett, and the Delaware, is fast overtaking the Choctaw, the Cherokee, and the Creek. That this fate surely awaits them, if they remain within the limits of the States,

> does not admit of a doubt. Humanity and national honor demand that every effort should be made to avert so great a calamity. * * *
>
> I suggest, for your consideration, the propriety of setting apart an ample district west of the Mississippi, and without the limits of any State or Territory, now formed, to be guarantied to the Indian tribes, as long as they shall occupy it; each tribe having a distinct control over the portion designated for its use. There they may be secured in the enjoyments of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier, and between the several tribes. * * *
>
> This emigration should be voluntary: for it would be as cruel as unjust to compell the aborigines to abandon the graves of their fathers, and seek a home in a distant land. But they should be distinctly informed that, if they remain within the limits of the States, they must be subject to their laws. In return for their obedience, as individuals, they will, without doubt, be protected in the enjoyment of those possessions which they have improved by their industry. But it seems visionary for me to suppose that, in this state of things, claims can be allowed on tracts of country on which they have neither dwelt nor made improvements, merely because they have seen them from the mountain, or passed them in the chase. Submitting to the laws of the State, and receiving, like other citizens, protection in their persons and property, they will, ere long, become merged in the mass of our population.

Bills providing for an exchange of lands with Indians holding lands east of the Mississippi were introduced into both Houses of Congress early in the session beginning December 1829 and after six months of public discussion and warm debate in Congress action was taken.

On May 28, 1830 (4 Stat. 411) President Jackson approved " An Act to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the river Mississippi." Thus, more than five years subsequent to the definite recommendation in President Monroe's message to Congress of January 27, 1825, was legislative approval given to the policy of colonization and concentration of the Indians in areas where they might be removed from close contact with the whites.

Section one of this act authorized the President to cause to be divided into a suitable number of districts, such area as he should consider necessary lying west of the Mississippi river, not included in any State or organized Territory, and as to which the Indian title had been extinguished," for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there."

Section two of the act made it lawful for the President to exchange any or all of such districts, as laid off and described, " with any tribe or nation of Indians now residing within the limits of any State or Territory, with which the United States have existing treaties, for the whole or any part or portion of the territory claimed and occupied by such tribe or nation," within any one or more States or Territories, provided " the land claimed and occupied by the Indians, is owned by the United States or the United States are bound to the State within which it lies to extinguish the Indian title thereto."

Section three of the act made it " lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same; *Provided always*, That such lands shall revert to the United States, if the Indians become extinct, or abandon the same."

Section four of the act authorized the President to have individual improvements upon any such occupied lands appraised and to pay to the individual entitled, the value thereof, the property to then belong to the United States.

Section five authorized assistance to the Indians in removing and settling in new location and for one year after the removal.

Section six authorized the protection of the Indians at their new location, from other tribes, or from any other person or persons.

Section seven authorized the same superintendence and care as previously accorded to them.

Section eight appropriated $500,000 for carrying out the act. Note the act did not authorize the Indians to set up a government of their own as Monroe and Jackson seem to have contemplated.

The exchange act did not provide for compulsory removal, and without familiarity with the conditions that had led to its enactment and an understanding of the forces that lay back of it, one might think the feeling displayed by its opponents to be quite unjustifiable. Yet the Indians and those who sympathized with their viewpoint knew that the passage of this apparently innocuous and permissive legislation formed an integral part of a plan to exert pressure for removal. During the first session of the Twenty-First Congress, meeting in December 1829, the Creeks and the Cherokee had strongly protested the efforts of Georgia and Alabama to extend State laws over Indians and their property, and, as stated above, the Choctaw and Chickasaw of Mississippi protested similar extension of State jurisdiction. Since Jackson was known to sympathize with the viewpoint of the States, it was taken for granted that he would use the exchange law as a means of effecting a solution of the controversy regarding State sovereignty.

Therefore immediately after the passage of the act of May 28, 1830 a means of preventing executive action by court intervention was sought. A request was made of the Supreme Court of the United States for an injunction to restrain the State of Georgia from the execution of her laws within the territory occupied by the Cherokee Nation, and recognized by the United States as still burdened with the Indian right of occupancy. The decision was finally rendered on March 6, 1831 (5 Peters 1). The decision turned upon the question of the constitutional right of the Cherokee to bring an action against one of the States of the Union. Practically, the court was required to consider the issue as one between the State of Georgia and a foreign nation. The injunction was denied on the ground that the Cherokee Nation was not a sovereign state and that therefore the court had no jurisdiction under the Constitution. However, the decision was not unanimous and many felt that the decision left the Indians in a most unfortunate position for the protection of their natural and equitable rights. The decision was apparently the only one that could properly be rendered on the question at issue, but it undoubtedly encouraged Georgia to take measures that could hardly be defended as humanitarian or just. The case served to arouse bitter feeling in the Southern States and was denounced by the southern press as an effort to force Georgia and other States to an open resistance to federal authority and as tending to a dissolution of the Union. While the position of Georgia was sustained in this case on a technical ground of jurisdiction, it had already been decided by the United States Supreme Court in February 1823 in the case of Johnson and Graham's Lessee v McIntosh (8 Wheaton 543) that the United States would maintain its authority over lands as to which the Indian title had not been extinguished, with the approval of the Federal Government, to the extent of refusing to recognize a title derived directly from the Indians by purchase, irrespective of the adequacy of consideration.

The decision in Cherokee Nation v Georgia was received with dismay by the Cherokee, Creeks and Chickasaw. The Choctaw had already signed a treaty of September 27, 1830 (7 Stat. 333), the preamble of which read:

> Whereas the General Assembly of the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people from the operation of these laws; Now, therefore that the Choctaw may live under their own laws in peace with the United States and the State of Mississippi they have determined to sell their lands east of the Mississippi and have accordingly agreed to the following articles of treaty.

Article II of this treaty described the boundaries of the immense area that the United States ceded to the Choctaw west of Arkansas " in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it." By article III the Choctaw ceded to the United States " the entire country they own and possess, east of the Mississippi River; and they agree to move beyond the Mississippi River, early as practicable, and will so arrange their removal, that as many as possible of their people, not exceeding one half of the whole number, shall depart during the falls of 1831 and 1832; the residue to follow during the succeeding fall of 1833; a better opportunity in this manner will be afforded the Government, to extend to them the facilities and comforts which it is desirable should be extended in conveying them to their new homes." However sincere may have been the intention of the United States Government to carry out the terms of article IV of this treaty, there certainly has been a conspicuous failure. Article IV reads in part:

> The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of Red People and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State; but the U. S. shall forever secure said Choctaw Nation from, and against, all laws except such as from time to time may be enacted in their own National Councils, not inconsistent with the Constitution, Treaties, and Laws of the United States; and except such as may, and which have been enacted by Congress, to the extent that Congress under the Constitution are required to exercise a legislation over Indian Affairs.

The Creeks were badly divided on the question of removal; most of them, discouraged to the point of despair; many of them living in destitution. Their request to send a delegation to Washington was granted on condition that the delegation be authorized by the tribe to treat " in conformity with the wishes of the Government." Secretary of War Cass finally arranged a treaty of March 24, 1832 (7 Stat. 366) under which the Creeks ceded to the United States " all their land east of the Mississippi River for 7,000,000 acres west of the Mississippi with the agreement that they should be removed " at the expense of the United States, and should receive subsistence while upon the journey and for one year after their arrival at their new homes—Provided, however, that this article shall not be construed so as to compel any Creek Indian to emigrate, but they shall be free to go or stay, as they please."

By treaty of May 9, 1832 (7 Stat. 368) the Seminole Indians yielded to the persuasions of James Gadsden and agreed to cede all claims to lands in Florida, to remove west within three years, and to receive lands adjacent to the Creeks and unite with them as one tribe. Lands were to be given them in proportion to their number. However, all this was conditional upon the report of their chiefs who should go to investigate the proposed western lands and ascertain the attitude of the Creeks. On October 18, 1832 (7 Stat. 377) the Appalachicola Indians ceded their lands in Florida and agreed to migrate west of the Mississippi.

On October 20, 1832 (7 Stat. 381) the Chickasaw entered into a treaty, the preamble of which read:

> The Chickasaw Nation find themselves oppressed in their present situation; by being made subject to the laws of the States in which they reside. Being ignorant of the language and laws of the white man, they cannot understand or obey them. Rather than submit to this great evil, they prefer to seek a home in the west, where they may live and be governed by their own laws. And believing that they can procure for themselves a home, in a country suited to their wants and condition, provided they had the means to contract and pay for the same, they have determined to sell their country and hunt a new home. The President has heard the complaints of the Chickasaws, and like them believes they cannot be happy, and prosper as a nation, in their present situation and condition, and being desirous to relieve them from the great calamity that seems to await them, if they remain as they are—He has sent his Commissioner Genl. John Coffee, who has met the whole Chickasaw nation in Council, and after mature deliberation, they have entered into the following articles * * *."

By article I the Chickasaw ceded all the land they owned and occupied east of the Mississippi. By article II the United States agreed to have the lands surveyed and to sell the same for the benefit of the Indians. Article IV provided for temporary tracts for them within the ceded lands until they could find suitable lands and arrange for removal west of the Mississippi.

By an act of December 19, 1829 Georgia had divided up the Cherokee country among the counties of Carroll, DeKalb, Gwinnett, Hall and Habersham and declared that effective June 1, 1830 the full jurisdiction of the said counties would be extended over the territory thus attached to each county. Section 10 of this law made it unlawful for any person to interfere with efforts of Cherokee Indians to cede lands. Section 12 made it unlawful for any one to take the life of an Indian who should attempt to emigrate from the Cherokee lands. Section 15 declared that an Indian would not be considered a competent witness or be allowed to be a party to a suit at law in which a white man was a party, except where the white man was living within the Cherokee group. From sections 10 and 12 it may fairly be concluded that the Cherokee were actually taking very drastic measures to discourage all emigration, enrollment for emigration, or advocacy of land cession. It had also been provided that contracts between whites and Cherokee should be void and unenforceable; and that improvements of Cherokee who had removed west might be sold to whites.

So many adventurers were entering the lands of the Cherokee in search of gold that the legislature of Georgia passed an act of December 22, 1830 forbidding white men to live among the Cherokee after March 1, 1831, except representatives of the Federal Government, or persons to whom a license had been granted and who should take an oath as citizens to support the laws of Georgia. The same act forbade legislative assemblies among the Cherokee, the assumption of court functions, or the serving of any process or order of a Cherokee court. A week later a large group of missionaries, at a meeting at New Echota, adopted resolutions declaring that the Cherokee were averse to removal and that the extension of the jurisdiction of Georgia over them would result in " an immense and irreparable injury." The missionaries were at once called upon by Georgia authorities to retract or to leave the Cherokee country. Upon their refusal several of them were arrested. After several legal skirmishes, conviction of several offenders was effected. Two of those convicted refused to take the oath of citizenship and appealed from the conviction and from the sentence of four years imprisonment in the State penitentiary.

The case reached the Supreme Court of the United States under the title of Samuel A. Worcester v Georgia. In a decision of March 30, 1832 (6 Peters 515) the court held that:

> The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with the treaties, and with the acts of Congress; the whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the government of the United States.

President Jackson openly flouted the Supreme Court decision in this case and made no effort to assert the jurisdiction of the United States within the Cherokee territory against the pretensions of Georgia. Even though he may not have remarked, as reported, that: " John Marshall has made his decision, now let him enforce it "; Jackson declined to assist the Indians in their jurisdictional controversy and advised them in no uncertain terms that if they expected to receive the assistance of the United States Government they must either emigrate or comply with the laws of the State in which they were living.

In September 1831, efforts to secure the consent of the Cherokee to removal had been renewed but not until December 29, 1835 (7 Stat. 478) was an agreement for removal finally obtained by the questionable methods used by General William Carroll and the Rev. John F. Schermerhorn, under which the Cherokees were to be paid $5,600,000 for lands, improvements, cost of removal and other claims. Even with this payment promised, so reluctant were the Cherokee to leave their homes in Georgia that removal was effected only when General Winfield Scott with an armed force was sent to Georgia in 1838 to lend the necessary encouragement to emigration.

Considerable difficulty was experienced in finding a suitable location for the Chickasaw. In 1832 Commissioner Herring said in his annual report: (p. 161)

> It was confidently expected that, before this period, an arrangement would have been made with the Choctaws for a portion of their land, for the future residence of their friends and former

> neighbors, the Chickasaws. The efforts of the Government to effect that object have been hitherto unavailing. Twenty-one millions of acres of land have been allotted to the Choctaws, being more than twelve hundred acres to each individual; and although this vast extent of territory is beyond any possible requirement for their use, they have continued to manifest a pertinacious unwillingness to dispose of any portion for the accommodation of the Chickasaws.

Another treaty of May 24, 1834 (7 Stat. 450) was negotiated before the removal of the Chickasaw was effected, and not until 1842 were the majority of the Seminole finally removed west of the Mississippi River. These later treaties involved only the details of procedure incident to the great task of removing a great number of human beings to a new home in a far distant country. The treaties of 1832 with the Creeks, Seminole and Chickasaw and the events preceding them had definitely closed the period of uncertainty as to whether removal would be put into effect as a policy.

Soon after Jackson became President steps were taken towards a removal policy in areas north of the Ohio River and in Missouri. By a treaty of September 4, 1829 (7 Stat. 327) the Delaware, then located on lands in Missouri, agreed to remove to a location west of that State. By treaties of February 28, 1831 (7 Stat. 348), July 20, 1831 (7 Stat. 351), and August 8, 1831 (7 Stat. 355) the Seneca and Shawnee Indians ceded their Ohio lands for lands west of Missouri. The preambles to all of these treaties assert the great anxiety of the Indians to emigrate to lands west of the Mississippi; but they were all negotiated by Special Commissioner James B. Gardiner, to whom had been assigned the duty of securing agreements to an exchange of lands under authority of the act of May 28, 1830 (4 Stat. 411). It is quite possible that the anxiety of the Indians is over-stated in the treaties. Treaties of August 30, 1831 (7 Stat. 359) with the Ottawa and January 19, 1832 (7 Stat. 364) with the Wyandot were also directed to the removal of Indians from Ohio to the trans-Missouri area.

The authorities of Illinois were especially determined to accomplish the removal of the several tribes from that State. The Sauk and Foxes, the most powerful tribe in Illinois, were divided into two parties. Those under the leadership of Keokuk were agreeable to peace and removal. Those who followed Black Hawk were disposed to stand their ground against the advancing wave of white settlers. Military operations under General Gaines of the regular army resulted in an agreement by the Indians on June 30, 1831 that they would thereafter remain west of the Mississippi, but Black Hawk violated this agreement and in the hostilities that followed the Black Hawk party eventually suffered a severe defeat in the battle of Bad Axe on August 2, 1832. Two treaties followed this defeat, one of September 15, 1832 (7 Stat. 370) with the Winnebago, who ceded all their claims east of the Mississippi and agreed to remove to Iowa Territory and to lands later included in the State of Minnesota; the other of September 21, 1832 (7 Stat. 374) with the Sauk and Foxes who surrendered all claims to land in Illinois and the greater part of eastern Iowa.

On October 24, 1832 (7 Stat. 391) the Kickapoo gave up the lands that had previously been assigned to them in Missouri and agreed to move southwest of the Missouri River; and on October 26, 1832 (7 Stat. 397) the Shawnee and Delaware, who had settled in Missouri while it was still Spanish territory, ceded their lands to the United States. In the Potawatomi treaty of October 26, 1832 (7 Stat. 394), ceding lands in the State of Indiana, the United States agreed to provide for them the same as for other Indians whenever they should wish to emigrate. On October 27, 1832 (7 Stat. 403) the Kaskaskia and Peoria, and on October 29, 1832 (7 Stat. 410) the Piankashaw and the Wea ceded their lands in Illinois and Missouri and agreed to settle west of the State of Missouri on waters of the Osage River. On December 29, 1832 (7 Stat. 411) the Seneca and Shawnee again ceded their Ohio lands and accepted lands west of the State of Missouri with the understanding that as the " United Nation of Senecas and Shawnees " they would occupy the newly acquired lands as " tenants in Common." Thus these tribes were ready to return to community ownership after a trial of the individualization of land in Ohio. By a treaty of January 19, 1832 (7 Stat. 364) the Wyandot had ceded all of their lands in Ohio but, before signing the treaty, they had insisted upon the striking out of Article VI which had provided for their removal to lands west of the Mississippi. Article V, which authorized their removal to Canada, to a reservation which they owned on the Huron River in Michigan, or to any place where they might secure the privilege of settlement from other Indians, remained in the treaty. This refusal of the Wyandot to accept the treaty with a provision for lands west of the Mississippi shows rather definitely that the treaty was the result of persuasion and Article V shows they were confused and uncertain as to their future course of action.

Similar treaties were made with the Ottawa on February 18, 1833 (7 Stat. 420), with the Quapaw of Arkansas on May 13, 1833 (7 Stat. 424) and with the United Chippewa, Ottawa and Potawatomi on September 26, 1833 (7 Stat. 431). However, arrangements for the removal of the Indians from Ohio, Indiana, Illinois, Missouri and Arkansas had practically been completed by the autumn of 1832.

From 1789 to 1824—a period of thirty-five years—the Federal Government pursued a course of opportunism with respect to Indian affairs, in general allowing the Indians to control all of their internal conduct and to a large extent their external relationships. The Government insisted upon a recognition of its sovereignty, maintained its exclusive right to extinguish the title to Indian lands, and provided for the regulation of trade and intercourse with them; but it assumed only slight responsibility for the maintenance of law and order within the areas which the Indians had not yet ceded, provided only limited amounts for civilization and support, and left the education of the Indian youth almost entirely to missionaries and private philanthropists.[22] An act of March 30, 1802 (2 Stat. 139) had authorized the President to appoint persons "as temporary agents to reside among the Indians" but not until the act of March 3, 1819 (3 Stat. 516) was there any general law for Indian educational purposes. The latter act provided that the President should employ persons of good moral character to instruct the Indians in agriculture and teach them reading, writing and arithmetic. The act appropriated $10,000 a year for these purposes. Little, or none, of this appropriation was distributed the first year but thereafter the appropriation was used in the assistance of private educational enterprises among the Indians. Several treaties had provided for blacksmiths and farmers to aid the Indians,[23] and the act of March 30, 1802 (2 Stat. 139) had authorized the President to expend $15,000 annually for domestic animals and implements of husbandry for the Indians.

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[22] See Act of August 20, 1789 (1 Stat. 54) authorizing a commissioner to treat with the Indians; Act of July 20, 1790 (1 Stat. 137) regarding licences to trade with Indians; Act of April 18, 1796 (1 Stat. 452) under which first government agents authorized, who were to be in charge of trading houses, act was limited to expire in 1822 and was not extended; Act of January 7, 1800 (2 Stat. 6) for preserving peace with Indian tribes; Act of March 1, 1800 (2 Stat. 14) providing aid to United Brethren for propagating "Gospel among the Heathen." Cf. Treaty of August 13, 1803 (7 Stat. 78) providing

The response of the Indians to the efforts to make them agriculturists was disappointing. To a large extent the lands within their reservations remained uncultivated and unproductive. As the years passed and expansion of the white settlements continued at an accelerated pace, the discontent of the Indians became ever more evident while the annoyance of the whites with the restrictions as to settlement of fertile and unused lands claimed by the Indians became constantly more pronounced. The failure of the earlier plans for removal encouraged the Indians to a more determined opposition thereto and aroused the whites to a more active agitation for a consolidation of the Indians beyond the areas that were then deemed essential to national development. The Monroe message of January 27, 1825 was probably the result of a public demand for a removal policy rather than the cause of a resurgence of

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$100 a year for 7 years for a priest among the Kaskaskias and $500 for building a church; Act of May 7, 1800 (2 Stat. 58) dividing Territory north of Ohio and making governors of Northwest and Indiana Territories superintendents of Indian affairs. Act April 21, 1806 (2 Stat. 402) re superintendent of Indian trade, amended March 2, 1811.

[23] See Treaty of August 18, 1804 (7 Stat. 81) providing for suitable persons to teach the Delawares the making of fences, cultivation of the soil and domestic arts adapted to their station; Treaty of November 14, 1805 (7 Stat. 96) with Creeks providing Blacksmiths.

the discussion that occupied the public mind first in 1803; but Monroe's recommendation in a formal message to Congress precipitated a controversy and operated to concentrate public attention upon this subject.

From the time of the earliest settlements in America there had always been a sharp division of opinion among the whites as to the ability of the American Indian to adapt himself to the social, economic and political philosophy of the whites, the expression of which they were accustomed to call " civilization." The failure of the Federal Government to achieve success in the handling of Indian affairs during the first forty years of its existence appears to have weakened the confidence of officials and citizens as to the possibility of assimilation. In a letter of October 14, 1829 to Governor Forsyth of Georgia, Secretary of War Eaton revealed the pessimism that existed in no small degree in official circles, when he declared: [24]

> But the years gone by, since the settlement of this country, induces an apprehension that the first original inhabitants of our forests are incapable of self-government by any of those rules of right which civilization teaches. In all intercourse with their civilized white brothers, and the various efforts made, and expenditures incurred, to inspire them with a knowledge of industry, and forgetfulness of their erratick habits, as yet success has not been attained.

In the autumn of 1831, Lewis Cass of Ohio, successor of Eaton as Secretary of War, presented to the Congress a very comprehensive report on the subject of the proposed removal of Indians and their colonization in the west. This report was really a defense of the Federal Government against the serious criticism that had been aroused by the act of March 28, 1830 authorizing removals. Many distinguished citizens and several of the benevolent societies had presented petitions and memorials to Congress against what they conceived to be the injustices of the proposed removals. Cass declared that a crisis had arrived in Indian affairs and that there was need for establishing upon a permanent basis the future destiny of the Indians.

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[24] Ann. Rep. Thomas L. McKenney to Secretary of War, Nov. 17 1829, in Reports on Ind. Aff. 1825-37, Ind. Of. Lib. copy, p. 187.

This he said should be done without the employment of force or improper influence. He made it clear that he did not think the Indians could remain within the existing States without being subject to the laws of such States and that he doubted that it would be beneficial to the Indians to remain even if they could obtain such independence as they had previously enjoyed. He doubted that their exemption from State laws could be maintained either on constitutional grounds or on those of natural right. He said he was advised that the Cherokee had made greater advances than any of the others yet, judging from the best information available, he said:

> I believe the great mass of the tribe is living in ignorance and poverty, subject to the influence of the principal men, and submitting to a state of things with which they are dissatisfied, and which offers them no rational prospect of stability and improvement.

Secretary Cass presented, in substance, the following principles for the solution of the Indian problem:[25]

1. A solemn declaration that the country assigned to them shall be theirs as long as they occupy it, settlers to be kept out.
2. The exclusion of ardent spirits from the territory assigned them.
3. The suppression of all hostilities among the Indians.
4. " Encouragement to the severalty of property, and such provision for its security, as their own regulations do not afford."
5. Assistance in the opening of farms and procuring animals and tools.
6. Leaving them their peculiar institutions, so far as compatible with their safety and that of the people of the United States.
7. The employment of competent instructors, as their progress may require.

The removal policy was finally brought to a definite and irrevocable conclusion under the administration of Andrew Jackson and the basis for such policy was clearly stated by him in several messages to Congress. From his first annual message of December 8, 1829 quotation has been made above. In his annual message of December 4, 1830 he discussed the removal question at length, declaring that the Choctaw and Chickasaw had " with great unanimity, determined to avail themselves of the liberal offers presented by the act of Congress " and had agreed to remove beyond the Mississippi. He represented that these Indians preferred to maintain their independence in the west rather than to submit to the laws of the States in which they were then living. He wrote: " If it be their real interest to maintain a separate existence, they will there be at liberty to do so without the inconveniences and vexations to which they would unavoidably have been subjected in Alabama and Mississippi." He compared the emigration of the early settlers to America and the migrations of their descendants to more pioneer locations in America with the proposed removal of the Indians at the expense of the Government and with provision for support for a year in the new location and observed with what gratitude and joy the whites would hail offers similar to those made to the Indians.

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[25] Schoolcraft, *History of Indian Tribes,* Part VI, p. 444.

Although Jackson emphasized in this message the great advantages that he conceived the Indians would obtain through removal to a new land where they would be free to live in their own way, unhampered by the restrictions that were unavoidable in the States where they were residing, he also disclosed his belief that the proposed removal would be of great advantage to the United States and to the individual States. He remarked that the removal would put an end to all possibility of collision between the authorities of the Federal and State governments on account of the Indians, would open the whole territory from Tennessee to Louisiana to settlement by the whites, and thus would " incalculably strengthen the southwestern frontier, and render the adjacent States strong enough to repel future invasion without aid." The great threat to the maintenance of amicable relations between the United States and individual States that had existed for several years prior to 1830 on account of the Indian problem in Georgia, Alabama and Mississippi cannot be denied; and, when criticism is made of the removal policy as affecting the Indians adversely, due consideration must be given to the urgent need for the establishment of national unity that confronted Jackson.

In his annual message of December 6, 1831 Jackson expressed even more decidedly his conviction that colonization of the Indians was the only feasible method of relieving the States and the Indians of accumulating embarrassments. In this message Jackson wrote:

> It is confidently believed that perseverance for a few years in the present policy of the Government will extinguish the Indian title to all lands lying within the States comprising our Federal Union, and remove beyond their limits every Indian who is not willing to submit to their laws. Thus will all conflicting claims to jurisdiction between the States and the Indian tribes be put to rest. It is pleasing to reflect that results so beneficial, not only to the States immediately concerned, but to the harmony of the Union, will have been accomplished by measures equally advantageous to the Indians.

Notwithstanding his experience in extensive military campaigns, President Jackson failed to realize fully the difficulties connected with the removal of more than fifty thousand civilians, a large proportion of whom were women, children and enfeebled or elderly persons, several hundred miles through a wilderness. He did not forsee that incompetency on the part of governmental representatives and procrastination or open opposition on the part of many of the Indians would delay the start and hamper the progress of emigration. He did not anticipate that unusually cold weather, unprecedented floods and a terrible scourge of cholera would work in unison to decimate a people who did not have clothing or other suitable equipment for a journey across extensive swamps and into a country where the summers were warmer and dryer and the winters much colder than in their native southland. Inured as Jackson was to hardships and determined as he undoubtedly was in his conviction that the majority of the southern Indians must be removed west of the Mississippi River, he would possibly have stayed his hand if he could have envisioned the terrible suffering to which these Indians were to be subjected during their removal and through the years of conflict with Plains Indians and the bitter internal dissension that followed their removal to

Indian Territory. The region to which the Choctaw and other southern tribes were removed was a fair land, in some respects superior to that from which they emigrated, but the long period of uncertainty, before and after removal, with resultant discouragement, improvidence and impoverishment together with the inability of the Indians to readily adapt themselves to a new environment created conditions that cast a great reproach upon the United States Government and brought down upon the head of Jackson most severe criticism by his contemporaries and by later historical writers.

The evil consequences of removal are more or less definitely ascertainable and a severe indictment of those chiefly responsible for removal has been drawn by sincere students of the records of the period. The suffering endured while removal was in progress; the disappointment and despair that saddened the lives of many of the Indians for years after their arrival in the area that became Indian Territory and still later the State of Oklahoma; the disastrous effects of the War between the States, which offered an opportunity for the rekindling of the smoldering fires of internal strife that had burned so briskly at times while they still lived in Georgia and adjacent States; and the extremely pitiable state in which tens of thousands of the descendants of the emigrants are living, a full century after the removal, combine to elicit the sympathy and arouse the indignation of any one familiar with their history.

However, the conspicuous success of many of the emigrants and of thousands of their descendants during the same century indicates that to a considerable extent the dismal failure of others may have been due to inherent weakness or faults for which governmental agencies cannot be held responsible. Comparison of their past or present condition with what it would have been if the removal had not been effected is purely speculative. It is indisputable that well-informed contemporaries of the emigrants did not consider the prospects for their assimilation in the south to be promising and their continued existence there as distinct communties was certainly as impossible of attainment as has similar segregation in an Indian Territory west of the State of Arkansas proven to be.

BEAUTY SPOTS ON INDIAN RESERVATIONS.

Lac du Flambeau, Wisconsin.

Flathead River, Montana.

San Poil River, Washington.

CHAPTER III

EARLY INDICATIONS OF AN ALLOTMENT POLICY
1633-1832

The abolition of communal ownership of reservation lands by Indian tribes and the assignment of separate tracts to family groups, or to individuals, has occupied such an important place in the Indian land policy of the United States during the last half of the nineteenth century and the first third of the twentieth century that a critical examination of the development of this policy is essential to the formation of a clear conception of the conditions that exist at the present time with respect to Indian land tenure. The belief, so generally accepted, that the policy of allotting reservation lands to individual Indians was developed in the latter part of the nineteenth century and suddenly thrust upon the Indians results from a lack of knowledge of the discussions that had been accorded this subject during decades prior to the final enactment of a general allotment act on February 8, 1887.

As a matter of fact the first conception of the assignment of tracts of land to individual Indians, or to families, preceded by more than a hundred and fifty years the formation of the Federal Union. It is true that the earlier suggestions of the individualization of Indian land ownership lacked the definite comprehensiveness that marked the final fruition of the plan, but the seed was there awaiting favorable conditions for its germination and development. The slow but steady advancement of the allotment idea, after it found favorable conditions for development late in the second decade of the nineteenth century, resembles the irregular growth of a plant much more than it does the deliberately planned progress of a man-made mechanism. There were periods of rapid growth followed by periods of rest, comparable to vegetative inactivity, as well as unbalanced growth in certain directions as favorable or unfavorable conditions exerted their influence. Yet through all these vicissitudes of circumstance may be detected an unmistakable trend toward the acceptance of a policy of distributing Indian lands in severalty, with increasing accentuation of the idea of thus developing in the Indian an aspiration for individual ownership.

In its order of 1633 the General Court of Massachusetts Colony declared that any of the Indians, who should come to the English plantations and live civilly and orderly, should have " allotments amongst the English, according to the custom of the English in like case." Apparently this was the first ocurrence in published law of the word *allotment* as applied to Indian lands.

In the Massachusetts act of 1758, providing for the appointment of three proper persons in each plantation as guardians for the Indians, it was ordered that such persons should take supervision over the lands of the Indians:

> and *allot* to the several Indians of the several plantations, such part of the said lands and meadows as shall be sufficient for their particular improvement from time to time during the continuance of this act.[1]

In an act of March 10, 1655 by the assembly of Virginia, reference was made to the " allotting " of lands to the Indians, but this act, as well as later ones directing that lands be " allotted " to the Indians, clearly contemplated the asignment of lands to groups of Indians and not to individuals.

Article four of a treaty between the commissioners of the United States and the sachems and warriors of the Wyandot, Delaware, Chippewa and Ottawa nations, concluded at Fort McIntosh on January 21, 1785 (7 Stat. 17) provided that the United States should " allot " certain lands to these nations to live and hunt on. The treaty with the Cherokee nation, made at Hopewell, Georgia, on November 28, 1785 (7 Stat. 19) referred in article four to the " boundary *allotted* to the Cherokees for their hunting ground; " and article three of the Choctaw treaty made at Hopewell on January 3, 1786 (7 Stat. 21) mentioned " the boundary of land hereby allotted to the Choctaw nation to live and hunt on." Again in a treaty with the chiefs and warriors of the Shawnee nation, concluded at the mouth of the Great Miami, on January 31, 1786 (7 Stat. 27) it was provided in article six that the United States " do allot to the Shawanoe nation " certain lands therein described. In all of these treaties the words " allot " and " allotted " refer to the assignment of lands to groups of Indians. In a treaty with the Cherokee Indians, made October 2, 1798 (7 Stat. 64) the verb " allotted " was used with reference to the lands assigned to the Indian agent for his temporary use. Only in the Massachusetts acts is the word " allot " used as signifying the assignment of a tract of land to an individual Indian and obviously the word did not there have the significance that was later given to it in connection with the breaking up of tribal relationships and communal ownership.

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[1] *Laws of Colonial and State Governments Relating to Indians, 1633-1831* (Washington, D. C., Thompson and Homans, 1832).

Taking advantage of the conditions created by the War of 1812 with the British, the Creek Indians living in Mississippi Territory sought a correction of the wrongs that they had suffered and made attacks upon the whites. In 1813 Major General Andrew Jackson was instructed to render the Creeks incapable of further attacks of this character. Jackson was highly successful in this campaign and through the defeat of their warriors and the destruction of their property brought the Creeks to an attitude of complete submission. Under date of August 9, 1814, Jackson concluded Articles of Agreement and Capitulation with the chiefs, deputies and warriors of the Creek nation. It appears from this agreement (7 Stat. 120) that nearly one-third of the Creek chiefs and warriors had remained loyal to the United States. Section one of this Capitulation provided for the cession of a large part of the lands of the Creeks in Georgia but it contained the following significant exception:

> Provided, nevertheless, that where any possession of any chief or warrior of the Creek nation, who shall have been friendly to the United States during the war, and taken an active part therein, shall be within the territory ceded by these articles to the United States, every such person shall be entitled to a reservation of land within the said territory of one mile square, to include his improvements as near the centre thereof as may be, which shall inure to the said chief, or warrior, and his descendants, so long as he or they shall continue to occupy the same, who shall be protected by and subject to the laws of the United States; but upon the volun-

> tary abandonment thereof, by such possessor or his descendants, the right of occupancy or possession of such lands shall devolve to the United States, and be identified with the right of property ceded hereby.

Obviously this provision in the Capitulation signed by General Jackson on behalf of the United States was directed to the satisfaction of the claims of chiefs and warriors who had assisted the United States in the Creek War and the reservation of lands for these chiefs and warriors was analogous to the bounty of lands granted by the States and the Federal Government to officers and enlisted men who had taken part in the Revolutionary War and in the War of 1812. It was entirely natural that such a system be extended to the Creeks at the close of the struggle in which some of the Indians had refused to take up arms against the United States and had actually assisted the Federal Government. However, it must be noted that the square mile of land promised to each loyal Indian chief or warrior was not to be granted in fee. The United States was merely to protect the Indian in the right of possession and enjoyment as long as he, or his descendants, should occupy the same, and upon voluntary abandonment by either the warrior, or his descendants, the right of occupancy or possession was to revert to the United States and become joined with the fee and whatever other rights of ownership and control were ceded by the agreement of capitulation.

An act of Congress of March 3, 1817 (3 Stat. 380) making provision for the location of the lands reserved by the first article of the treaty of August 9, 1814, supra, between General Jackson and the Creeks, declared in section one:

> Every such chief, or warrior shall and may select such four quarter sections, or such number of quarter sections and fractional parts of sections not exceeding six hundred and forty acres of land, as have been or may be surveyed, in pursuance of the act of Congress, passed the third day of March, one thousand eight hundred and fifteen (3 Stat. 228), and as shall include their respective improvements. And, in case such chief, or warrior, shall have resided at one place, and cultivated a farm or plantation at another place, he may, at his option, select such quarter sections, and fractional parts of such sections, as shall include his said separate improve-

ments; *Provided, however,* That the lands so selected shall enure to such chief, or warrior, so long only as he shall continue to occupy and cultivate the same; and, in case he shall not have abandoned the possession, shall, on his decease, descend to and vest in his heirs in fee simple, reserving to the widow of such chief or warrior the use and occupation of one-third part of said lands, during her natural life.

Section two of this act provided that if any chief or warrior, entitled to a reservation at the time of the signing of the treaty, died subsequently leaving a widow and a child or children, who continued to occupy and cultivate the land, they should have the same right of selection as the original claimant would have had if living; and the child or children would take a fee simple title, with a life use of one-third to the widow; provided that the child or children could not alienate the land, except by devise, until each and every one of them had arrived at the age of twenty-five years.

Section three provided that the descendant of any native Creek, male or female, who at the commencement of the late war with the hostile Creeks, occupied and cultivated a farm or plantation; who continued friendly to the United States during the war, and who after the war returned to and occupied and cultivated the land should be entitled to a reservation of two quarter sections of land to be selected in the same manner as in the first section. These lands should enure to them as long as they should occupy and cultivate the same, and descend in fee to their children, and on failure of children revert to the United States, reserving to the husband or widow the right to occupy and cultivate one-third part during their natural lives

Section four provided that the child or children of a chief or warrior of the Creek nation who was killed or died in the service of the United States during the Creek war, or who had subsequently died of wounds received in that war, was entitled, without payment, of as much land as the chief or warrior would have been entitled to, had he been living at the time the treaty was signed.

The reader must not fail to note the remarkable departure in the Act of March 3, 1817 from the view point that obtained when the treaty of August 9, 1814 was concluded. It is true that the act of 1817 guaranteed to a chief or warrior only the right of occupancy during his lifetime and then only on condition that he continue to actually occupy and cultivate the same. However, if he should continue to occupy and cultivate the land until his death, the entire four quarter sections, the equivalent of one square mile of land, would descend and vest in his heirs in fee simple, with a life interest of one-third to his widow.

The provisions of sections 2, 3, and 4 of the act of 1817 are also unexpectedly liberal in recognition of landed rights of a more permanent nature than the mere right of occupancy. Unfortunately the records of this early period do not reveal clearly the reasons for this liberalized view-point. Of course, it may be said that the treaty of August 9, 1814 reflects the view-point of the successful combatant in a military test of strength; that General Jackson recognized only the need of providing such a bounty to the loyal chiefs and warriors as would insure their loyalty in the future; and that when the enlightened conscience of the nation, as represented in the Congress, came to consider the matter, it was perceived that justice required the recognition of a greater claim on the part of the Indians than a mere right of occupancy. However, without positive evidence to support this view, it is not just either to reflect upon the motives of General Jackson or to accord unmerited credit to his contemporaries in Congress. It is possible that the view-point of the entire nation, including Jackson, had changed greatly between the dark days that marked the third year of the War with Great Britain and the days of cheerful optimism that characterized the "era of good feeling" that began in 1817 with the return of foreign trade and national prosperity following the close of the war. The thorough crushing that Jackson had administered to the Creeks, had for the time being, put an end to the spirit of rebellion against the whites that had for years actuated not only the Creeks but other tribes in the south and in the area north of the Ohio River. There is evidence that many of the Indians after the close of the War of 1812-1815, showed a disposition to accept the dominance of the whites, to adopt settled habits of life and live harmoniously with their neighbors. This attitude may have renewed in the whites a hope that harrassing Indian wars were at an end, that the Indian was capable of adapting himself to the habits of civilized life. Jackson probably accepted such a view to a less extent than many of his fellow citizens because of a more intimate knowledge of the habits of a large part of the Indians; and the extent to which pressure for the removal of Indians from Georgia continued indicates that the political leaders of Georgia probably were not in full sympathy with provisions in federal acts or treaties that tended to keep Indians within the State.

A treaty with the Cherokee nation, concluded at Cherokee Agency on July 8, 1817 (7 Stat. 156) by Andrew Jackson, Joseph McMinn and David Meriwether, as United States Commissioners, recited the circumstances connected with the visit of the delegates of the Upper and Lower Cherokee to Washington in 1808, when the former asked that they be allowed to remain in the east as agriculturists, while the latter requested that they be assisted to remove west of the Mississippi river and continue their hunter life; declared that the Lower Cherokee had selected a site on the Arkansas and White rivers, west of the Mississippi; made a cession of large areas in the east with a provision that an equal amount of land be given them west of the Mississippi; provided that payment should be made by the United States for their improvements on the lands vacated; and stipulated that certain equipment be given them, and certain annuities be paid. Article 8 of this Cherokee treaty provided:

> And to each and every head of any Indian family residing on the East side of the Mississippi river, on the lands that are now, or may hereafter be, surrendered to the United States, who may wish to become citizens of the United States, the United States do agree to give a reservation of six hundred and forty acres of land, in a square, to include their improvements, which are to be as near to the centre thereof as practicable, in which they will have a life estate, with a reversion in fee simple to their children, reserving to the widow her dower, the register of whose names is to be filed in the office of the Cherokee agent, which shall, be kept open until the census is taken as stipulated in the third article of this treaty.

Provided, That if any of the heads of families, for whom reservations may be made, should remove therefrom, then, in that case, the right to revert to the United States. And provided further, That the land which may be reserved under this article, be deducted from the amount which has been ceded under the first and second articles of this treaty.

This treaty of July 8, 1817 was made with the representatives of the Lower Cherokee only; the Upper, or agricultural branch of the Cherokee, refusing to join in a treaty of cession, despite the strenuous efforts of the United States Commissioners to secure an agreement with them.

It will be noted that the provisions regarding reservations of 640 acres each to those who wished to remain east of the Mississippi were very similar to those in the earlier act of Congress, approved March 3, 1817, providing for the carrying out of the Jackson treaty of August 9, 1814 with the Creeks, and that, considering the fact that those allowed reservations under the Cherokee treaty were not, necessarily, entitled to special privileges in return for military services, the terms of the treaty were practically as liberal as those of the Creek act. As Jackson is generally credited by his detractors, as well as by his admirers, with a leading part in the making of both the Creek treaty of 1814 and the Cherokee treaty of 1817, it would not be unreasonable to assume that the provision in both treaties of reservations for Indians of settled habits may have originated with Jackson, or have been willingly accepted by him when suggested by another. It has been stated that the first suggestion of an allotment of lands to individual Indians was contained in a report from Secretary of War William H. Crawford to President James Madison on March 13, 1816; [2] but the provision for individual reservations on a rather general basis in the treaty of August 9, 1814 seems to anticipate Secretary Crawford's suggestion to President Madison. It should be remembered that Secretary Crawford was from the State of Georgia and that the individual reservation, or allotment, idea may have been developing in Georgia during a period of several years.

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[2] Creek Memorial to the 47th Congress, 2d Sess., in Misc. Doc. relating to Indian Affairs, Ind. Of. Lib., VII, p. 5574. House Misc. Doc. No. 18. See Act Feb. 20, 1819 (3 Stat. 484), Sec. 1 of which authorized President to purchase tracts reserved by act of Mar. 3, 1817 for individual Creeks.

The reservation of particular tracts of land to individuals in some of the earlier treaties of the United States with Indian tribes, such as the Choctaw treaty of November 16, 1805 (7 Stat. 98), may be considered an anticipation of the idea of an allotment of land to Indians; yet such reservations are scarcely more significant than the provisions for the assignment of particular tracts to individuals under the Massachusetts acts of 1633 and 1758.'[8] The Choctaw treaty reserved lands for the individual enjoyment of Alzira and Sophia " daughters of Samuel Mitchell by Molly, a Choctaw woman "; but this reservation appears to have been merely a recognition by the tribe of a special privilege to an intermarried family, probably because of an assumed obligation to the father for some favor to the tribe. In a treaty of December 30, 1805 (7 Stat. 101) between William Henry Harrison, Governor of the Indiana Territory, as the representative of the United States, and the Piankashaw tribe of Indians, it was stated in article 5 that the Indians " reserve to themselves the right of locating a tract of two square miles, or twelve hundred and eighty acres, the fee of which is to remain with them forever." The use of the word *fee* as descriptive of the title held by the Indians was most unusual. From the institution of the Federal Government, the precedent set by Great Britain and the Colonies had been followed and the principle maintained that the Indians did not have a full and complete title to the lands that they occupied. The explanation of the word *fee* in the Piankashaw treaty will evidently be found in the fact that this greatly diminished tribe now ceded all their land with the privilege of selecting only two sections of the regular government survey, which General Harrison recognized should, under these circumstances, be theirs in fee simple. In the Chickasaw treaty of September 20, 1816 (7 Stat. 150) special reservations were made for four individuals and their heirs. These reservations are not believed to have any particular significance as fore-runners of a policy of allotting lands in severalty to Indians but rather instances of special privilege. The agreement in the Piankashaw treaty that a small group of Indians should receive the complete title to the lands that they should select was very significant.

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[8] See Ann. Rep. Com. Ind. Aff. 1885, pp. 320-321; and 1891, p. 40.

As stated above the Creek treaty of August 9, 1814, the act of Congress of March 3, 1817 to effect the purposes of the said treaty, and the Cherokee treaty of July 8, 1817 contained provisions of a general nature under which a large number of persons, undetermined at the time of the making of the treaties or of the passage of the act by Congress, might acquire life estates in particular tracts of land the fee to which would vest in their descendants, if they should continue to occupy the same until their death. Thus the two treaties and the act mentioned appear to have definitely foreshadowed the idea of the allotment of the lands occupied by a tribe to individual members of the tribe. Evidence that advantage of the provisions of these treaties was actually taken by the Indians is found in a report of December 29, 1918, by Governor McMinn to the Secretary of War that 146 Cherokee families had taken individual reservations under the treaty of July 8, 1817.[4]

On September 29, 1817 (7 Stat. 160) Lewis Cass and Duncan McArthur, Commissioners of the United States, at the Rapids of the Miami of Lake Erie, signed a treaty with the Wyandot, Seneca, Delaware, Shawnee, Potawatomi, Ottawa, and Chippewa Indians, which clearly contemplated the vesting of the fee simple title to land in individual Indians and unlike the Creek act of March 3, 1817 and the Cherokee treaty of July 8, 1817, provided for such vesting of title during the lifetime of the Indians to whom the lands were assigned. This marked the most advanced step yet taken toward the position that the Indian could and should take his place beside his white neighbors in the economic, social and political life of the Nation.

Article 5 of this treaty declared that the annexed schedule was to be considered a part of the treaty and that the tracts of land stipulated in the treaty to be granted to the Wyandot, Seneca and Shawnee tribes were to be granted for the use of the persons named in the schedule. The schedule contained several hundred names of individual members of the three tribes named, with a statement that the members of each tribe were to share equally in certain lands granted to the respective tribes. Article 6 named the chiefs of the three said tribes to whom " and their successors in office " separate specified tracts for the three tribes were to be granted, by patent, in fee simple. Article 7 of the treaty read:

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[4] Royce, *Cherokee Nation,* Ann. Rep. Bur. Eth., 1883-84, p. 225.

> Art. 7. And the said chiefs or their successors may, at any time they may think proper, convey to either of the persons mentioned in the said schedule, or his heirs, the quantity secured thereby to him, or may refuse so to do. But the use of the said land shall be in the said person; and after the share of any person is conveyed by the chiefs to him, he may convey the same to any person whatever. And any one entitled by the said schedule to a portion of the said land, may, at any time, convey the same to any person, by obtaining the approbation of the President of the United States, or of the person appointed by him to give such approbation. And the agent of the United States shall make an equitable partition of the said share when conveyed.

This section marked a radical departure from all previous theory and practice. The Indians had always enjoyed the largest measure of freedom in their own self government and neither the States nor the Federal Government had taken much interest in how they handled the lands within the areas that they occupied; but here they were granted the full title to public lands and the chiefs were given authority to determine when the individual Indian should assume full responsibility as an owner of land in fee simple in the same manner as his Anglo-Saxon or French neighbor in whose conscious and sub-conscious make-up there was a long tradition of individual ownership of land and a sense of responsibility for the maintenance of organized society and a stable government. Lewis Cass was a man of unusual energy and mental power and it seems more than probable that he was largely responsible for this new and bold attack upon the Indian problem.

But apparently this treaty had taken more advanced ground than Cass's superiors in the executive department, or probably in the legislative branch, of the government felt ready to occupy and less than a year later, on September 17, 1818 (7 Stat. 178) Cass and McArthur signed a supplementary treaty with the Wyandot, Seneca, Shawnee, and Ottawa, modifying very materially the provisions of the treaty of September 29, 1817. Article 1 of the new treaty read as follows:

> Art. 1. It is agreed, between the United States and the parties hereunto, that the several tracts of land, described in the treaty to which this is supplementary, and agreed thereby to be granted by the United States to the chiefs of the respective tribes named therein, for the use of the individuals of the said tribes, and also the tract described in the twentieth article of the said treaty, shall not be thus granted, but shall be excepted from the cession made by the said tribes to the United States, reserved for the use of the said Indians, and held by them in the same manner as Indian reservations have been heretofore held. But (it) is further agreed, that the tracts thus reserved shall be reserved for the use of the Indians named in the schedule of the said treaty, and held by them and their heirs forever, unless ceded to the United States.

Thus did the Federal Government reject the plan, of accepting a cession of all the lands held by a tribe and the granting to the tribe of the fee title to certain lands, that was projected in the treaty of September 29, 1817; and definitely returned to the policy of receiving cessions with the exception of certain lands that the Indians continued to hold by the same title that they had previously held all.

The eighth article of the treaty of September 29, 1817 had provided that " the United States agrees to grant by patent in fee simple, to the persons hereinafter mentioned, all of whom are connected with the said Indians, by blood or adoption, the tracts of land herein described." The section then named the parties and the amount of land to be granted each, the amount generally being one section of 640 acres.

But article 3 of the supplementary treaty of September 17, 1818 (7 Stat. 179) provided as follows:

> Art. 3. It is hereby agreed that the tracts of land, which, by the eighth article of the treaty to which this is supplementary, are to be granted by the United States to the persons therein mentioned, shall never be conveyed, by them or their heirs, without the permission of the President of the United States.

It is clear that between September 1817 and September 1818 those in authority definitely decided that it was unwise to give the full power of alienation either to the Indians of the said tribes generally, or to the more advanced representatives of the tribes.

However, the plan of granting specific areas to particular individuals connected with the various tribes seems to have been rather generally accepted and from 1817 onward there are provisions of this kind in treaties. Thus in a treaty of October 2, 1818 (7 Stat. 185), negotiated by Jonathan Jennings, Lewis Cass and Benjamin Parke with the Potawatomi of Ohio, there is provision for a grant of two sections each to James Burnett, Isaac Burnett, Jacob Burnett and Abraham Burnett and of one section each to Rebecca Burnett and Nancy Burnett, all of them children of Cakimi, a Potawatomi woman, sister of Topinibe, principal chief of the nation. One section was also to be granted to Perig, a Potawatomi chief, and one to Mary Chatalie, daughter of Neebosh, another chief. Section four of this treaty declared: " but the land so granted shall never be conveyed by either of the said persons, or their heirs, unless by the consent of the President of the United States." Section three of a treaty of the same date by the same commissioners with the Wea tribe provided that one section should be granted to Christmas Dageny and one to Mary Shields, formerly Mary Dageny, children of Mechinquamesha, sister of Jacco, a chief of the said tribe, with the same restriction as to alienation. (7 Stat. 187): Section three in a treaty of October 6, 1818 (7 Stat. 189), made by the same three commissioners with the Miami Indians, required grants of from one section to six sections each to more than thirty individuals, several tracts of which were to be held jointly; all of the grantees being either full or mixed-blood Miami Indians. Section six of this treaty imposed the usual restrictions upon alienation except as to the tracts to be granted to Jean Bapt. Richardville, principal chief of the Miami, who was to receive nine sections in fee simple.

It is difficult to escape the conviction that the chiefs and leaders of the tribes, and especially the mixed-bloods, so frequently mentioned as the recipients of special grants, were not forgetful of their personal interests and that the commissioners were quite ready to agree to special considerations for individuals as a means of facilitating the signing of treaties. The giving of presents at the time agreements were made has formed the basis for charges of bribery, and especially so in connection with the treaty of July 8, 1817 with the Cherokee and that of February 12, 1825 with the Creeks, in the negotiation of which Andrew Jackson took a leading part. However, the seriousness of such a charge should be carefully weighed. There can be no doubt that Jackson had become thoroughly convinced before the making of the treaty of 1817 with the Cherokee that the white people of Georgia and the neighboring territory would be better off if the great body of the Indians in that region were removed west of the Mississippi River; yet he may have been just as thoroughly convinced that such a removal would be desirable from the Indian standpoint. He was a man of strong convictions and of vigorous action and men of this type are accustomed to look primarily to the end in view and to be somewhat less meticulous about the methods used to attain the end than would those with weaker convictions as to the results to be sought. Condemnation of Jackson for the giving of presents and emoluments to the leaders of the Indians must also reflect upon the motives of many of his predecessors and successors who found it difficult to reach any conclusion with Indian tribes unless their leaders received the consideration that they believed consistent with their positions as the principal men in the negotiations. The granting of special favors or privileges to the chiefs would tend to influence their judgment and might even induce them to betray the interests of their fellow-tribesmen, yet this practice had been followed for so many years prior to Jackson's time that it had come to be recognized by both Indians and whites as a necessary accompaniment of treaty-making.

The earliest accounts of voyages of discovery in America refer to presents given to the Indians, and later narratives of explorations quite generally reveal that goods were presented to the natives as a means of facilitating the purposes of the expeditions. The colonial records disclose the practice of giving presents to the chiefs to overcome their hostility or to establish their friendship more firmly. Sir William Johnson, who enjoyed for many years an unusual position of influence with the Indians of New York and adjacent territory, recommended to the British Board of Trade in 1763 a policy of making presents annually to the Indians. The abandonment by the British of the practice of giving presents to the natives has been given as one of the reasons for the hostility of the Indians that developed subsequent to the expansion of British influence after the French and Indian War. Neither officials nor private parties appear to have doubted seriously the propriety of giving largesses to the Indians, either to overcome their disaffection or as an evidence of gratitude for favors received from the natives.

In arranging for a proposed treaty with the New York Indians at Johnston, N. Y. under date of February 2, 1778 the Congress of the confederated States provided:[5]

> That the commissioners be authorized to purchase five or six hundred blankets, or to order that number to be sent to Johnston, from any of the public stores to the eastward, if to be had there, to be given as presents to the Indians.

The report of the proceedings of the Continental Congress for March 19, 1784 contained the following:[6]

> *Resolved*, That the superintendent of finance, cause to be purchased, a quantity of goods, to be applied in negotiating the treaty with the Indians, the amount not to exceed the sum of fifteen thousand dollars, including those on hand. * * *

That the newly formed government of the United States was not unaware of the advantages that might be gained through the distribution of gratuities among the Indians is also indicated by article four of the treaty of October 22, 1784 (7 Stat. 15) reading:

> The Commissioners of the United States, in consideration of the present circumstances of the Six Nations, and in execution of the humane and liberal views of the United States upon the signing of the above articles, will order goods to be delivered to the said Six Nations for their use and comfort.

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[5] *Laws of Colonial and State Governments, 1633-1831.* See also Proc. of Con. Congress, July 12, 1775, in same publication.

[6] *Ibid.,* Appendix, p. 18.

And when on August 7, 1786, the Congress, in accordance with the ninth of the Articles of Confederation and Perpetual Union, giving the Congress exclusive power to regulate trade and manage all Indian affairs, where the Indians were not members of a particular State, provided for the establishment of an Indian Department in two districts, the southern and the northern, it declared:

> All stores, provisions and other property, which Congress may think necessary for presents to the Indians shall be in the custody and under the care of the said superintendents.

A treaty of January 21, 1785 (7 Stat. 16) with the Wyandot, Delaware, Chippewa and Ottawa Indians contained a provision for the giving of presents to the Indians. Article 12 of the Creek treaty of August 7, 1790 (7 Stat. 37); article 14 of the Cherokee treaty of July 2, 1791 (7 Stat. 41); article 6 of the treaty of November 11, 1794 (7 Stat. 46) and numerous treaties provided for "presents" to the Indians. Many of the records of negotiations with the Indians show that goods or cash emoluments were given to the chiefs. For instance article 2 of the treaty of October 24, 1801 (7 Stat. 65) with the Chickasaw declares:

> The commissioners of the United States give to the Mingco of the Chickasaws, and the deputation of that nation, goods to the value of seven hundred dollars, to compensate him and them and their attendants for the expense and inconvenience they may have sustained by their respectful and friendly attention to the President of the United States of America, and to the request made to them in his name to permit the opening of the road.

This treaty was made to secure to the United States the right to open a road through Chickasaw territory from a part of Tennessee to Natchez on the Mississippi.

Article three of a treaty of November 16, 1805 (7 Stat. 99) provided for the payment of $500 to each of three Choctaw chiefs, "in consideration of past services in their nation" and also for the payment to each of them of an annuity of $150 "during their continuance in office," Article 6 of the treaty of September 20, 1816 (7 Stat. 151) with the Chickasaw declared that:

> In consideration of the conciliatory disposition evinced, during the negotiation of this treaty, by the Chickasaw chiefs and warriors, but more particularly as a manifestation of the friendship and liberality of the President of the United States, the commissioners agree to give, on ratification of this treaty,

to ten chiefs and to the interpreter $150 each, in goods or cash, to thirteen military chiefs named $100 each;

> and, as a particular mark of distinction and favor for his long services and faithful adherence to the United States government, the commissioners agree to allow to general William Colbert an annuity of one hundred dollars for and during his life.

It might be said that in the later treaties Jackson and Cass with their associates merely substituted land gratuities for merchandise and cash as encouragements for the signing of treaties by the leaders. The facts do not amply support such a suggestion. The records of the period beginning with the election of James Monroe in 1816 indicate a marked tendency on the part of the more progressive Indians, and especially of the mixed-bloods, to seek for themselves a security of title to particular tracts of land analogous to the tenure under which their white neighbors held their lands. Without assuming any very conscious determination on the part of such people to adopt in full the habits of civilized life, one may readily understand how the infiltration of white blood in the various tribes and the close contact of many of the full-bloods with the white settlements had developed the viewpoint that the maintenance of the former hunting life east of the Mississippi River was improbable, if not entirely impossible, and led many to the conclusion that they must, to a large extent, adopt the white man's way of life or emigrate westward. Many of the Indians had already been practically forced into one or more removals by the swelling tide of white immigration. Some of them, particularly the half and quarter bloods, were unwilling to give up those features of white community life that they enjoyed, and therefore eagerly sought title to tracts of land on which they might live, or from which they hoped to realize more or less handsomely in disposal of the same to the land-hungry white immigrants who were crowding into the rich agricultural lands west of the Appalachin Mountains. Apparently John C. Calhoun, in charge of Indian affairs from 1817 to 1825, as Secretary of War, and his associates believed that a part of the difficulties of Indian administration could be overcome by the assignment of tracts of land to individual Indians. To a treaty of February 27, 1819 (7 Stat. 195) between Calhoun and the Cherokee chiefs, the preamble of which recited that the greater part of the Cherokee nation desired to remain east of the Mississippi and to " commence those measures which they deem necessary to the civilization and preservation of their nation," was attached a list of the names of 31 persons to whom, it was agreed by article three of the treaty, reservations of 640 acres each were to be made in fee simple, "all of whom are believed to be persons of industry, and capable of managing their property with discretion, and have, with few exceptions, made considerable improvements on the tracts reserved." [7]

James Barbour, successor of Calhoun, as Secretary of War, included " a distribution of property among individuals " among his recommendations in a report of 1826, as did his successor, P. B. Porter in his annual report for 1828 and his successor, Lewis Cass in his report of 1831.

A new treaty between Calhoun and the chiefs and headmen of the Choctaw nation on January 20, 1825 (7 Stat. 234) referred to the treaty of Doak Stand between Andrew Jackson and Thomas Hinds, as United States Commissioners, and the Choctaw on October 18, 1820 (7 Stat. 210) by which the United States had ceded certain lands west of the Mississippi, which cession had been found to contain a large number of settlers who were citizens of the United States, from which fact difficulties had arisen; and provided for the recession of these lands to the United States and the payment of an annuity of $6,000 to the Choctaws for such cession. Article four of this treaty of 1825 was as follows:

> Article 4. It is provided by the ninth section of the treaty aforesaid, that all those of the Choctaw Nation who have separate settlements, and fall within the limits of the land ceded by said Nation

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[7] The request of the Upper Cherokee in 1808 to remain in the east on separate tracts and become citizens contained the germ of the allotment idea.

> to the United States, and desire to remain where they now reside, shall be secured in a tract or parcel of land, one mile square, to include their improvements. It is, therefore, hereby agreed, that all who have reservations in conformity to said stipulation, shall have power, with the consent of the President of the United States, to sell and convey the same in fee simple. It is further agreed, on the part of the United States, that those Choctaws, not exceeding four in number, who applied for reservations, and received the recommendation of the Commissioners, as per annexed copy of said recommendation, shall have the privilege, and the right is hereby given to them, to select, each of them, a portion of land, not exceeding a mile square, anywhere within the limits of the cession of 1820, when the land is not occupied or disposed of by the United States; and the right to sell and convey the same, with the consent of the President, in fee simple, is hereby granted.

Calhoun has been charged, as Secretary of War, with being unsympathetic toward the Indian; but this treaty, made almost at the close of his eight-year administration of Indian Affairs, contains nothing indicative of hostility toward, or lack of sympathy with, the Indians living in a State almost adjacent to his native South Carolina. In fact articles 6 and 8 provide for payments from the United States treasury to settle long-standing but indefinite claims of the Choctaw.

The general desire of the mixed-blood Indians to obtain individual holdings of land is indicated by the reservations of one section (640 acres) each to a large number of "half-breeds" named in article five of the treaty of June 2, 1825 (7 Stat. 240) with the great and little tribes of Osage Indians; similar reservations in article 6 of a treaty of June 3, 1825 (7 Stat. 245) with the Kansa Indians; and article 4 of the treaty of August 5, 1826 (7 Stat. 291) made at "Font du Lac of Lake Superior" between Lewis Cass and Thomas L. McKenney, United States Commissioners and the Chippewa by which a section of Chippewa lands was granted to each of more than sixty half-breeds.

Article 4 of the Fond du Lac treaty read in part as follows:

> It being deemed important that the half-breeds, scattered through this extensive country, should be stimulated to exertion and improvement by the possession of permanent property and fixed residences, the Chippewa tribe, in consideration of the affection they

bear to these persons, and of the interest which they feel in their welfare, grant to each of the persons * * * six hundred and forty acres of land * * * and as soon as such locations are made, the jurisdiction and soil thereof are hereby ceded, * * * The persons to whom grants are made shall not have the privilege of conveying the same, without the permission of the President.

A treaty of October 16, 1826 (7 Stat. 205) with the Potawatomi continued in article 6 the policy of granting lands to individuals with a restriction on alienation; as did a treaty of October 23, 1826 (7 Stat. 300 Art. 3) with the Miami; another of September 20, 1828 (7 Stat. 317) with the Potawatomi (Art. 3); one of July 29, 1829 (7 Stat. 320) with the United Chippewa, Ottawa and Potawatomi of the waters of the Illinois, Milwaukee and Manitowoc Rivers (Art. 4); and one of August 1, 1829 (7 Stat. 323) with the Winnebago (Art. 4).

Evidence of the tendency toward a separation between the full-bloods and the mixed-bloods during this period may be detected in article 9 of a treaty of July 15, 1830 (7 Stat. 330) in which the Minnesota Sioux provided for a separate tract for the " half-breeds of their nation." These mixed-bloods were to hold this tract " in the same manner that other Indian Titles are held." In article 10 provision was made for a separate tract for the use of the half-breeds of the Omaha, Iowa, Otoe, Yankton and Santee Sioux. While the half-breeds of these tribes did not receive individual tracts, these separate provisions for them throw light upon the instances to which reference has been made in which there was an effort to separate the mixed-bloods from the full-bloods by the assignment of lands in severalty.

The final treaty for the removal of the Choctaw to lands west of the Mississippi, entered into September 27, 1830 (7 Stat. 333) contained provisions in articles 14, 15 and 19 for reservations in the State of Mississippi for several classes. The provisions of this treaty were even more liberal than those of previous treaties as to the amount of land that might be held by the Indians providing they were actually cultivating a reasonable amount of land and elected to remain and become citizens of the United States. But an encouragement to removal was contained in a provision that if a Choctaw should elect to remain east of the Mississippi and should later remove he should not share in the Choctaw annuity. Special reservations were also provided in supplementary articles.

In the Creek treaty of March 24, 1832 (7 Stat. 366), by which all of the Creek lands east of the Mississippi River were ceded to the United States, article II provided that ninety principal chiefs might select one section of land each and every other head of a Creek family might select one-half section, " which tracts shall be reserved from sale for their use for a term of five years, unless sooner disposed of by them." It was also provided that twenty sections should be selected " for the orphan children of the Creeks, and divided and retained or sold for their benefit as the President may direct." Article III authorized a conveyance of such tracts with the approval of the President; and article IV read:

> at the end of five years, all the Creeks entitled to these selections, and desirous of remaining, shall receive patents therefor in fee simple, from the United States.

In a treaty of October 20, 1832 (7 Stat. 381) by which the Chickasaw Indians ceded to the United States all of their lands east of the Mississippi and agreed to remove to lands west of the Mississippi, individual reservations were not provided for those who should elect to remain east of the Mississippi permanently, as in the Cherokee and Choctaw treaties. The Chickasaw treaty contemplated the ultimate removal of all members of the tribe. However, article IV declared that the President was determined that they " shall not deprive themselves of a comfortable home, in the country where they now are, until they shall have provided a country in the west to remove to, and settle on, with fair prospects of future comfort and happiness." The Chickasaw agreed to endeavor, as soon as practicable after the ratification of the treaty, " to hunt out and procure a home for their people west of the Mississippi river, suited to their wants and condition." In the event that they should fail to find such a location previous to the first public land sale of their lands east of the Mississippi, they were to make selections in accordance with the public land surveys to include their improvements, if the land were good for cultivation, and if not other unoccupied lands. In this act there was a revival of the use of the word "allotted" but it is used to describe a temporary tenure. A part of section IV read:

> And there shall be allotted to each family as follows (to wit): To a single man who is twenty-one years of age, one section—to each family of five and under that number two sections—to each family of six and not exceeding ten, three sections, and to each family over ten in number, four sections—and to families who own slaves, there shall be allowed, one section to those who own ten or upwards and such as own under ten, there shall be allowed half a section.

On July 10, 1832 Elbert Herring of New York had been appointed as the first Commissioner of Indian Affairs under authority of an act of July 9, 1832 (4 Stat. 564) creating that office in the War Department. On September 30, 1830 Thomas L. McKenney had been dismissed as the head of the division of Indian affairs for political reasons according to statements by McKenney. His successor Samuel S. Hamilton held the position for about one year and was succeeded by Herring. Thus Herring had been in immediate contact with Indian administration approximately one year when he submitted his annual report of November 22, 1832 to the Secretary of War, Lewis Cass. In this report Commissioner Herring expressed his belief in individualism and his aversion to a system of community property among the Indians in the following language:[8]

> The unrestrained authority of their chiefs, and the irresponsible exercise of power, are of the simplest elements of despotic rule, while the absence of the *meum* and *tuum* in the general community of possession, which is the grand conservative principle of the social state, is a perpetual operating cause of the *vis inertiae* of savage life. The stimulus of physical exertion and intellectual exercise, contained in this powerful principle, of which the Indian is almost entirely devoid, may not unjustly be considered the parent of all improvements, not merely in the arts, but in the profitable direction of labor among civilized nations. Among them it is the source of plenty; with the Indians, the absence of it is the cause of want, and consequently of decrease of numbers.

Herring's stilted statement of his conception of the correct basis of society doubtless reflected the sentiments of a large number of his contemporaries.

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[8] Ann. Rep. Com. Ind. Aff. 1825-1837, Ind. Of. Lib. copy, p. 163.

CHAPTER IV

EXPERIMENTATION WITH AN ALLOTMENT POLICY
1833-1871

In November 1832 President Andrew Jackson was re-elected by a most decisive vote of the American people. Apparently the majority of his fellow-citizens approved of his policies, including the most positive stand that had ever been taken regarding the solution of the Indian problem. There were two well-defined elements in the Indian policy of the Jackson administration. One of these—and certainly the more prominent of the two elements was the segregation of the greater part of the Indians from the white population, because of a firm conviction that the majority of the Indians were not ready to adopt the customs of the whites and that their continued residence within, or near to, white communities was not only detrimental to the national welfare but also conducive to racial controversy and possibly to armed conflict. The other element of the policy contemplated the assignment of tracts of land to those individuals among the Indians who were willing to accept the social and political system of the whites and who were considered by the government to be sufficiently advanced in civilization to assume the duties and responsibilities of citizenship at once or within a relatively short time.

While Jackson had been one of the leaders in the advocacy of removal and had taken a prominent part in proceedings that recognized the right of well-disposed and progressive Indians to retain homes within the areas that had long been occupied by their tribes, he had not formulated the policy of removal nor had he played a principal role in the development of a general plan for the integration of the more progressive and industrious natives with the white communities in which they lived. Jefferson had first directed the public attention to the subject of removal in 1803 and nearly a quarter century later Monroe had given the plan a more concrete and comprehensive definition. Calhoun and Cass had taken an active interest in both aspects of the Indian policy with the emphasis upon the removal phase. Colonel Thomas L. McKenney, who had held the office of superintendent of Indian trade from April 2, 1816 to May 6, 1822, and was in charge of the division of Indian affairs in the War Department from March 11, 1824 to September 30, 1830, had probably contributed no small part to the development of both phases of the policy.

Throughout the twenty years following Jackson's second inauguration on March 4, 1833, the Indian policy, that had been gradually developing during the preceding thirty years, was continued. However, the smoldering controversy over Indian affairs had been fanned to a blazing flame by the arbitrary manner in which Jackson had proceeded to carry out his convictions regarding removal. Subsequent to 1832, the Jackson following, flushed with success, was in no mood to brook opposition and, as a part of the plan for the reorganization of Indian administration, secured the passage of an act of June 30, 1834 (4 Stat. 735) " to provide for the organization of the department of Indian Affairs." The use of the word " department " in this act was inaccurate since the act provided for the organization and functioning of the field force of the War Department having charge of Indian Affairs. Another act of June 30, 1834 (4 Stat. 729), known as the Non-intercourse Act, defined the Indian country and contained detailed provisions for the regulation of trade and other business and social relationships with Indians living within the Indian country.[1] This act was completely in accord with the provision in the Constitution authorizing Congress " to regulate Commerce * * * with the Indian Tribes." It emphasized strongly the Jacksonian theory of segregation and reflected the current view of the administration that agitation of the Indians was fomented by outside influences.

While many of the treaties negotiated with the tribes north of the Ohio River, during the period beginning in 1833, provided for the assignment of land to individual Indians, and especially to mixed-bloods, in severalty; a large number of the treaties, following the lead of the treaty of November 7, 1825 (7 Stat. 284) with the Shawnee contemplated the removal of Indians to land west of the State of Missouri. The theory of colonization and consolidation of Indians west of the organized States of the Union was widely held by public officials of that time. It was strongly urged that all of the Indians east of the Mississippi be concentrated west of Missouri in the area that later became the States of Kansas and Oklahoma. Such a plan seems to have been either pleasing or fairly satisfactory to the Indians living in Ohio, Indiana and Illinois, and the remnants of these tribes were speedily removed. But the Indians living in Michigan, Wisconsin and eastern Minnesota were not favorably disposed toward removal and although they quite generally agreed to removal in treaties, they artfully avoided compliance with the terms of the treaties and were generally successful in their efforts to forestall removal.

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[1] The act defined " Indian country " as all of the United States west of the Mississippi, not in Missouri, Louisiana, or Arkansas Territory and land east of Mississippi, not in any State, to which the Indian title had not been extinguished.

A treaty of May 9, 1836 (7 Stat. 503) with the Swan Creek and Black River Chippewa of Michigan provided for their removal to an area northwest of St. Anthony's Falls on the Mississippi; one of January 14, 1837 (7 Stat. 528) with the Saginaw Chippewa authorized a removal either to a location west of Lake Superior in Wisconsin Territory, or to lands west of the Mississippi and southwest of Missouri " as the legislation of Congress may indicate;" and a later treaty of December 20, 1837 (7 Stat. 547) with the same tribe provided that the United States should reserve a location for them on the headwaters of the Osage River " lying contiguous to tribes of kindred language," and that nothing in the treaty of January 1837 should entitle them to a location west of Lake Superior. A still further modification of January 23, 1838 (7 Stat. 565) was evidently intended to prevent any last minute objection to removal on the part of the Saginaw Chippewa.

By a treaty of November 1, 1837 (7 Stat. 544) the Winnebago agreed to remove from Wisconsin within eight months, to lands west of the Mississippi conveyed to them by a treaty of 1832. Nine years later they were still in Wisconsin and in a treaty of October 13, 1846 (9 Stat. 878) they agreed that they would remove to a tract north of St. Peter's River and west of the Mississippi River, within an area that had been ceded by the Chippewa of the Mississippi and Lake Superior by a treaty of August 21, 1847 (9 Stat. 904). Article 6 of a treaty of September 3, 1839 (7 Stat. 580) with the Stockbridge and Munsee Indians of Wisconsin, formerly from New York and later from Indiana, contemplated a removal west of the Mississippi; yet nine years later they were still in eastern Wisconsin and by a treaty of November 24, 1848 (9 Stat. 955) they again agreed to remove within one year to lands west of the Mississippi. On October 18, 1848 (9 Stat. 952) the Menominee consented to remove to a tract on Crow Wing River included in the cession of the Mississippi and Lake Superior Chippewa of 1847.

However, the close of the year 1853 found the Michigan Chippewa still in Michigan; the Wisconsin Chippewa, Menominee, Stockbridges and Munsee, and most of the Winnebago still in Wisconsin. By a treaty of May 14, 1854 (10 Stat. 1064) the Menominee were given a permanent reservation on the Wolf and Oconto Rivers in Wisconsin; and by treaties of February 5, 1856 (11 Stat. 663) with the Stockbridge and Munsee tribes and February 11, 1856 (11 Stat. 679) with the Menominee, the former two affiliated tribes were settled upon two townships of the twelve that had been assigned to the Menominee. Under a treaty of August 2, 1855 (11 Stat. 633) the United States agreed that the Swan Creek, Black River, and Saginaw Chippewa might remain in Michigan. While some of the Winnebago remained in Wisconsin, others removed to Minnesota, thence to Dakota after the Minnesota Sioux War of 1862-63 and eventually to Nebraska.[2]

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[2] As illustrative of dissensions within Indian tribes, see Stockbridge treaty of November 24, 1848 (9 Stat. 955) reciting that a part desired to hold land in common, a part to hold in severalty as citizens. See also treaties of Feb. 27, 1855 (10 Stat. 1172); April 15, 1859 (12 Stat. 1101); Mar. 8, 1865 (14 Stat. 671) with Winnebago. The first provides for allotments on Blue Earth River in Minnesota, the last for allotment on lands of the Omaha Indians.

On January 15, 1838 (7 Stat. 550) a treaty was concluded at Buffalo Creek, New York, with the several tribes of New York Indians, under which they ceded the greater part of the lands at Green Bay, Wisconsin, that they had received as a result of the treaty of 1831 (7 Stat. 342) with the Menominee, and the United States agreed to set apart a tract west of the State of Missouri and north of the Cherokee tract "as a permanent home for all the New York Indians, now residing in the State of New York, or in Wisconsin, or elsewhere in the United States, who have no permanent homes." This treaty provided in considerable detail for the location of each tribe on the new tract set apart for them. While a large part of the Oneida had settled near Green Bay and were able to maintain fairly amicable relations with the Menominee, the other tribes of the Iroquois Nation could not effect satisfactory arrangements for a settlement in Wisconsin on a permanent basis and the treaty of January 1838 was a formal acknowledgement by the Indians and the Federal Government of the failure of former plans for removal. The detailed plans in the treaty of 1838 were likewise doomed to failure. The making of the plans was due to pressure from private and governmental sources combined with the aspirations of dissatisfied members of the tribe for a return to the former habits of life. Many of the tribesmen like the more progressive Indians in the Cherokee and related tribes of the south were not only loath to leave their ancestral home but had formed a definite attachment to the conditions under which they were then living and viewed with much concern the unknown conditions with which they might be confronted in the west.

On May 20, 1842 (7 Stat. 586) a new agreement was made with the Seneca under which they might continue to hold the Alleghany and Cattaraugus Reservations in New York but should release all title to the Buffalo Creek and Tonawanda Reservations to Ogden and Fellows, who held a preemption right to the land, upon the receipt of $202,000. The Seneca were to surrender possession to all lands on these two reservations within two years. However, they did not remove and on November 5, 1857 (11 Stat. 735) the United States agreed that in consideration of the relinquishment of all right or claim to lands west of the State of Missouri and for the cost of removal and assistance after removal, there should be set aside in the Treasury of the United States for the benefit of the Tonawanda Band of Seneca $256,000, from which sum the United States would purchase all the lands that the Ogden and Fellows interests should be willing to sell within the Tonawanda Reservation and would take title for the same by deed of conveyance in fee to the Secretary of the Interior to be held in trust for the exclusive use, occupation and enjoyment of the Tonawanda Band. Provision was made for a later transfer of this trust reasponsiblity to a public officer of the State of New York. The Seneca proceedings illustrate the uncertainity as to future location by which many Indian tribes were disturbed and confused for decades after the removal policy was adopted.[3] In a report of 1838 Henry R. Schoolcraft, who had been sent as a federal representative to treat with the Indians in the Great Lakes region, advised Indian Commissioner Carey A. Harris that the northern Indians were generally adverse to a removal south of the Missouri River and that " much prejudice is felt against the entire plan and but little true information is extant on the subject." [4] That the majority of the Michigan and Wisconsin Indians were averse to any removal is shown by the fact that agreements of these Indians made between 1836 and 1848 for removal to Minnesota were not carried out.

The suppression of the Nullification movement in South Carolina, the bitter political controversy over the National Bank issue and the difficulties encountered in the efforts to effect the removal of approximately 60,000 Indians from the southern States to locations west of Missouri absorbed a great part of the time and energy of the second administration of Jackson. Jackson was succeeded on March 4, 1837 by Martin Van Buren, a man of his own selection but one having very different personal characteristics and with a political philosophy that enabled him to accept compromises. A conciliatory attitude was adopted in negotitions with the northern Indians. The unexpected resistance of the southern tribes to the abandonment of the territory they had ceded east of the Mississippi had weakened the national confidence in a policy of enforced removal, yet the failure of the Indians to react to the stimulus of Caucasian industry continuously emphasized the contrast between the social economy of the natives and that of the whites.

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[3] See House Doc. No. 1590, Feb. 12, 1915, 63d Cong. 3d Sess.

[4] Ann. Rep. Com. Ind. Aff. 1838-1842, Accompanying Paper No. 16 to Harris Rep. for 1838, Ind. Of. Lib. copy, p. 458.

On October 22, 1838 T. Hartley Crawford of Pennsylvania was appointed Commissioner of Indian Affairs. In discussing plans for the "western tribes of Indians" in his first report of November 25, 1838, Commissioner Crawford wrote:[5]

> Unless some system is worked out by which there shall be a separate allotment of land to each individual whom the scheme shall entitle to it, you will look in vain for any general casting-off of savagism. Common property and civilization cannot co-exist. The few instances to be found in the United States and other countries of small abstracted communities, who draw their subsistence and whatever comforts they have from a common store, do not militate against this position. Under a show of equality, the mass work for two or three rulers or dictators, who enjoy what they will, and distribute what they please. The members never rise beyond a certain point, (to which they had reached, generally, before they joined the society,) and never will, while they remain where they are. But if they should, these associations are so small and confined, as to place their possessions in the class of individual estates. At the foundation of the whole social system lies individuality of property. It is, perhaps, nine times in ten, the stimulus that manhood first feels; it has produced the energy, industry and enterprise that distinguish the civilized world, and contributes more largely to the good morals of men than those are willing to acknowledge who have not looked somewhat closely at their fellow-beings. With it come all the delights that the word *home* expresses. The comforts that follow fixed settlements are its train; and to them belong not only an anxiety to do right, that those gratifications may not be forfeited, but industry, that they may be increased. Social intercourse and a just appreciation of its pleasures result, when you have civilized and, for the most part, moral men. This process, it strikes me, the Indians must go through, before their habits can be materially changed; and they may, after what many of them have seen and know, do it very rapidly. If, on the other

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[5] Ann. Rep. Com. Ind. Aff. 1838-1842, Ind. Of. Lib. copy, pp. 424-425.

hand, the large tracts of land set apart for them shall continue to be joint property, the ordinary motive to industry (and the most powerful one) will be wanting. A bare subsistence is as much as they can promise themselves. A few acres of badly cultivated corn about their cabins will be seen, instead of extensive fields, rich pastures, and valuable stock. The latter belongs to him who is conscious that what he ploughs is his own, and will descend to those he loves,—never to the man who does not know by what tenure he holds his miserable dwelling. Laziness and unthrift will be so general as not to be disgraceful; and if the produce of their labors should be thrown in the common stock, the indolent and dishonest will subsist at the expense of the meritorious."

Obviously Commissioner Crawford was thoroughly convinced as to the advisability of establishing Indians upon individual land holdings, and by an act of March 3, 1839 (5 Stat. 349) the Congress of the United States authorized the allotment of the Brotherton tribe, immigrants from New York and still earlier from Connecticut, upon lands east of Lake Winnebago in Wisconsin, within the area that had been ceded by the Menominees on February 8, 1831 (7 Stat. 342) for the use of several of the New York tribes. This act contained unusual indications of the confidence of Congress in the capacity of the Indians to care for their own affairs without governmental direction. It provided for the division of the lands among the Indians of the Brotherton tribe. It should be noted that this action was taken by an ordinary act of Congress instead of through a treaty as was customary. That some apparent degree of success attended this effort to invest the Brotherton Indians with a fee title to their individual holdings and to make them full citizens of the United States is attested by the fact that four years later an identical act, except as to four or five minor changes in language and the necessary modifications as to the name of the tribe and the date when effective action was to be taken, was passed as to the Stockbridge Indians.

An act of March 3, 1843 (5 Stat. 645) recognized that a large number of the Stockbridge Indians were definitely settled on agricultural lands east of Lake Winnebago in Wisconsin, that they had substantial permanent improvements thereon, and that their progress in civilization had been such that they were entitled to full rights and privileges of citizenship. Section one of this act provided that the township of land which they were occupying:

> may be partitioned and divided among the different individuals comprising said tribe of Stockbridge Indians, and may be held by them separately and severally in fee simple, after such division shall have been made in the manner hereinafter mentioned.

Section 2 arranged for a board of commissioners to be selected from among the tribe to make a division of the lands; and section 4 provided that the division should be made:

> in such way and manner, and upon such principles, and in such proportions, as shall be agreeable to equity and justice, and consistent with the laws, usages, and agreements of said tribe: *Provided however*, That the buildings and improvements, and the farms on which the same are situated, which are now held or possessed in severalty by the members of the said tribe shall, so far as the same can consistently be done, be allotted or apportioned to the present occupants.

Section 7 required the filing of a report by the commissioners before January 1, 1844 and from the time of the filing of the report and the transmission of the same to the President:

> the said Stockbridge tribe of Indians, and each and every of them, shall then be deemed to be and from that time forth are hereby declared to be, citizens of the United States, to all intents and purposes, and shall be entitled to all the rights, privileges, and immunities of such citizens, and shall, in all respects, be subject to the laws of the United States and of the Territory of Wisconsin in the same manner as other citizens of said Territory; and the jurisdiction of the United States and of said Territory shall be extended over the said township or reservation now held by them, in the same manner as over other parts of the said Territory; and their rights as a tribe or nation, and their power of making or executing their own laws, usages, or customs, as such tribe, shall cease and determine.

Either the Congress was convinced in 1843 that the Stockbridge Indians were prepared to adopt the settled habits of the whites and become agriculturists or it was making a bold experiment with a tribe that had long been in contact with the whites. That the capacity of the Stockbridges for a settled life was over-estimated in 1843 is indicated by the language and provisions of the treaty of November 24, 1848 (9 Stat. 955), disclosing that part of them still desired to hold their lands in common and were willing to migrate to lands in Minnesota. However, it must be remembered that the settlers in southern Wisconsin were exerting strong pressure for the removal of all Indians from that part of the newly formed State of Wisconsin and full credence should not be given to representations as to the desire of the Indians for removal.[6]

On May 31, 1849 Orlando Brown of Kentucky assumed the office of Commissioner of Indian Affairs under the Department of the Interior, which had been created by the act of March 3, 1849 (9 Stat. 395). During a period of sixty years, from August 7, 1789 to March 3, 1849, the administration of Indian Affairs by the Federal Government had been carried out by the War Department. Throughout this long period the Indian tribes had been treated as semi-independent groups who were allowed a large degree of freedom in the management of their tribal affairs and the control of individual members of the tribes so far as their conduct did not seriously interfere with the rights of American citizens. It had been customary to deal with their chiefs and headmen as the responsible representatives of the tribes. The Indians had suffered many wrongs at the hands of irresponsible white men who supplied them with spirituous liquors, took unfair advantage of them in trade and crowded them off from lands to which they were attached. There had been instances of official mal-administration and unethical dealings with the Indians, but generally the conduct of officers of the War Department had without question been honorable. It is more than probable that there had been a great lack of understanding of the Indian mind and a failure to appreciate how difficult it was for these primitive people to adapt themselves to changed conditions. Many persons interested in the Indians had come to think that the administration of Indian affairs by the War Department was not achieving the results that might be attained and that the Indian problem had become one of internal administration for which a civil and not a military viewpoint was needed. Yet the transfer of jurisdiction from one department of the Government to another could not operate to remove the difficulties facing the nation nor to change the character of the Indian, and no marked change in the methods of administration followed the transfer.

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[6] Letter May 17, 1849 from Agent Wm. H. Bruce to Com. Medill says some 200 settlers squatted in Indian country in southern Wisconsin, Ind. Of. File Green Bay B. 409, 1849; Petitions for removal Stockbridges from Wisconsin, Ind. Of. File B. 243, 1853, S. W. Beal submitted; cf. Green Bay, L. 26, T. 47½, M. 234, M. 188, M. 152 and other letters from Supt. Murray in 1852 regarding controversy over a child causing much bitter feeling between races.

In discussing conditions among the Indians in his report of November 30, 1849 to Thomas Ewing, Secretary of the Interior, Commissioner Brown struck a note similar to that of Commissioner Crawford in his report of 1838 when he said:[7]

> A well-disposed Indian, desirous of improving the condition and to provide more permanently for the comfort of himself and family, by resorting to agricultural pursuits, raising stock, or acquiring other species of property, is, in most instances, among the less civilized tribes, deterred from doing so, because of the disposition, especially among the idle and dissolute, to consider all kinds of property as common, and to which everyone having the power to take has as good a right as its possessor.

In his annual report of November 27, 1850 Commissioner Luke Lea of Mississippi declared:[8]

> The only considerable number of Indians who have retained any portion of their original possessions, and survived the perils of immediate contact with a white population, fast thickening around them, are those remaining in the State of New York, comprising a mere remnant of the once numerous and powerful Iroquois, or Six Nations.

On March 4, 1853 Franklin Pierce of New Hampshire became President of the United States and on March 24, 1853 the Senate confirmed the nomination of George W. Manypenny of Ohio as Commissioner of Indian Affairs. Pierce, the Democratic candidate in the national election of November 1852, had received an overwhelming majority over General Winfield Scott, the nominee of the Whig party. This unusual endorsement by the voters was probably construed by the successful party as a mandate for aggressive action on national questions. The accession of Mr. Manypenny to the office of Commissioner of Indian Affairs was followed by a vigorous policy of treaty-making, in which a revival of the idea of the individualization of land holdings was very prominent.

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[7] Ann. Rep. Com. Ind. Aff. 1849, p. 3.

[8] *Ibid.,* 1849-1852, Ind. Of. Lib. copy, p. 41.

Article 6 of a treaty of March 16, 1854 (10 Stat. 1043) signed at Washington, D. C. by Commissioner Manypenny and the chiefs of the Omaha tribe provided:

> Article 6. The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail themselves of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one year of age, one eighth of a section; to each family of two one-quarter section; to each family of three and not exceeding five, one-half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one-quarter section for each additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon. And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permant home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale, or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return the tract may be declared abandoned,

and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of such land. And the residue of the land hereby reserved, or of that which may be selected in lieu thereof, after all the Indian persons or families shall have had assigned to them permanent homes, may be sold for their benefit, under such laws, rules or regulations, as may hereafter be prescribed by the Congress or President of the United States. No State legislature shall remove the restrictions herein provided for, without the consent of Congress.

The Omaha treaty was the first of a series of treaties under the commissionership of Mr. Manypenny that very definitely carried out a plan for the assignment of lands to Indians in severalty. Under the terms of the treaty the Omaha ceded to the United States a very large area in the northeastern portion of the present State of Nebraska. The lands reserved were supposed to be suitable for agricultural use and one-eighth section, or eighty acres, was adopted as the amount that should be assigned to a single person over twenty-one years of age. This acceptance of eighty acres as the unit was merely the recognition of the fact that this amount would be sufficient for the needs of an individual and was possibly suggested by the fact that such a basis would afford one-quarter section, or one hundred sixty acres to a man and his wife, which was approximately the amount of land that white families engaged in agriculture were using in the obtaining of a living. The provision against alienation and that for the inheritance of the home by the family of the deceased recipient of land were by no means novel. Yet it is possible that familiarity of Commissioner Manypenny and his advisors with the failure of other Indians to measure up to expectations, as to the abandonment of roving habits when lands had been assigned to them, may have led to the inclusion in the Omaha treaty of the strict provisions against the leasing or alienation of lands and of the authorization for the cancellation of assignments if those to whom the lands were assigned failed to remain upon and cultivate the same. Certainly the language of the Omaha treaty indicated a very determied purpose to induce the Indians to engage in agricultural pursuits.

The significance of the Omaha treaty as marking the adoption of a new policy as to Indian land tenure must not be over-estimated because of the fact that at a later period the unit of land-assignment in that treaty was quite generally used and other provisions followed in a general way. Forty years before the making of the Omaha treaty, or in 1814, provision had been made in a treaty with the Creeks for the assignment of a section of land to certain members of the tribe and for the descent of the right to use the land to the family of the one receiving the same; and the act of March 3, 1817, confirming the said treaty, contained restrictions against alienation and specifically provided that upon the decease of the recipient, while still occupying the land, the same should descend in fee simple to his heirs. The treaty of September 29, 1817 with the Wyandot, Seneca and Shawnee tribes provided for the vesting of the fee title of lands to certain Indians during the lives of those to whom the lands were assigned; and a number of treaties made between 1825 and 1830 contained similar provisions.

A treaty with the Shawnee Indians made on May 10, 1854 (10 Stat. 1053) allowed individual holdings as follows:

> if a single person, two hundred acres, and if the head of a family, a quantity equal to two hundred acres for each member of his or her family—to include, in every case, the improvement on which such person or family now resides.

This Shawnee treaty contained detailed provisions for the assignment of such allotments to intermarried persons, adopted persons, minors and other incompetents, the selections of the latter to " be made by some disinterested person or persons, appointed by the Shawnee council, and approved by the United States agent."

Article 6 of a treaty of May 17, 1854 (10 Stat. 1069) with the Iowa tribe declared that:

> The President may cause the country the Ioways have reserved for their future home, to be surveyed, at their expense, and in the same way as the public lands are surveyed, and assign to each person or family such portion thereof as their industry and ability to manage business affairs may, in his opinion, render judicious and proper; and Congress may hereafter provide for the issuing to such persons, patents for the same, with guards and restrictions for their protection in the possession and enjoyment thereof.

Article 3 of a treaty of May 18, 1854 (10 Stat. 1074) with the Sauk and Foxes of Missouri and article 3 of one of the same date (10 Stat. 1078) with the Kickapoo contained provisions practically identical with the Iowa treaty. A treaty of May 30, 1854 (10 Stat. 1082) with the Kaskaskia, Peoria Piankashaw, and Wea allowed 160 acres to each individual but one of June 5, 1854 (10 Stat. 1093) with the Miami, like the Shawnee treaty of May 10, 1854, allowed two hundred acres to each individual. The treaty of September 30, 1854 (10 Stat. 1109) with the Chippewa of Lake Superior provided in article 2 for the patenting of eighty acres to each mixed-blood over twenty-one years of age and article 3 authorized the President, in his discretion, to:

> assign to each head of a family or single person over twenty-one years of age, eighty acres of land, for his or their separate use; and he may, at his discretion, as fast as the occupants become capable of transacting their own affairs, issue patents therefor to such occupants, with such restriction of the power of alienation as he may see fit to impose. And he may also, at his discretion, make rules and regulations, respecting the disposition of the lands in case of the death of the head of the family, or single person occupying the same, or in case of its abandonment by them.

Article 6 of a treaty of November 18, 1854 (10 Stat. 1122) with the Chasta tribe of Oregon authorized the President, at his discretion, to direct that a survey be made of the agricultural lands of the tribe and:

> divide the same into small farms of from twenty to eighty acres, according to the number of persons in a family, and assign them to such Indians as are willing to avail themselves of the privilege and locate thereon as a permanent home, and to grant them a patent therefor under such laws and regulations as may hereafter be enacted or prescribed.

A treaty of November 29, 1854 (10 Stat. 1125) with the Umpqua and Kalapuya Indians of Oregon was more specific in providing for:

> a single person over twenty-one years of age, twenty acres; to each family of two persons, forty acres; to each family of three and not exceeding five persons, sixty acres; to each family of six and not

exceeding ten persons, eighty acres; to each family over ten in number, forty acres for each additional five members.

Another treaty of January 22, 1855 (10 Stat. 1143) with the Kalapuya, contained the same provisions as that of November 29, 1854, except that to a family of not over five persons the acreage was limited to fifty, and the amount to a family of not over ten persons was limited to only twenty acres for each additional three members. Both the treaty of 1854 and that of 1855 authorized the President to provide for the inheritance of the land; to issue patents with restrictions on alienation and exemption from levy, sale or forfeiture, which conditions were to remain:

> in force until a State constitution, embracing such lands within its boundaries, shall have been formed, and the legislature of the State shall remove the restrictions, and if any such family shall at any time neglect or refuse to occupy or till a portion of the land assigned, and on which they have located, or shall rove from place to place, the President may, if the patent shall have been issued, revoke the same, or, if not issued, cancel the assignment, and may also withhold from such person or family their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return, the tract may be declared abandoned and thereafter assigned to some other person or family of the Indians residing on the reserve.

Treaties of January 22, 1855 (12 Stat. 927) January 26, 1855 (12 Stat. 933), and January 31, 1855 (12 Stat. 939) with various tribes of the Puget Sound region authorized the President to assign lands to individuals subject to the regulations in the sixth article of the treaty with the Omaha, so far as the same should be practicable.

Article one of a treaty of January 31, 1855 (10 Stat. 1159) with the Wyandot Indians is particularly interesting as indicative of a belief that certain Indians were no longer in need of federal supervision. This article reads:

> The Wyandott Indians having become sufficiently advanced in civilization, and being desirous of becoming citizens, it is hereby

> agreed and stipulated, that their organization, and their relations with the United States as an Indian tribe shall be dissolved and terminated on the ratification of this agreement, except so far as the further and temporary continuance of the same may be necessary in the execution of some of the stipulations herein; and from and after the date of such ratification, the said Wyandott Indians, and each and every one of them, except as hereinafter provided, shall be deemed, and are hereby declared, to be citizens of the United States, to all intents and purposes; and shall be entitled to all the rights, privileges, and immunities of such citizens; and shall in all respects be subject to the laws of the United States, and of the Territory of Kansas in the same manner as other citizens of said Territory; and the jurisdiction of the United States and of said Territory, shall be extended over the Wyandott country in the same manner as over other parts of said Territory. But such of the said Indians as may so desire and make application accordingly, to the commissioners hereinafter provided for, shall be exempt from the immediate operation of the preceding provisions, extending citizenship to the Wyandott Indians, and shall have continued to them the assistance and protection of the United States, and an Indian agent in their vicinity, for such a limited period or periods of time, according to the circumstances of the case, as shall be determined by the Commissioner of Indian Affairs; and on the expiration of such period or periods, the said exemption, protection, and assistance shall cease; and said persons shall then, also, become citizens of the United States, with all the rights and privileges, and subject to the obligations, above stated and defined.

Article two of this treaty provided for the cession of lands to the United States and included the statement: " the object of which cession is, that the said land shall be subdivided, assigned, and reconveyed, by patent, in fee simple, in the manner hereinafter provided for, to the individuals and members of the Wyandot Nation, in severalty." Article 3 authorized the appointment of three commissioners, one by the United States, and two by the Wyandot council, who were to make a fair and just division and distribution of the lands among the Wyandot, the lands, without improvements, to be apportioned in tracts of as nearly equal area and value as practicable. Upon the completion of the division and assignment of lands, the commissioners were to make up carefully prepared lists of the members of the tribe:

which lists shall exhibit, separately, *first*, those families the heads of which the commissioners, after due inquiry and consideration, shall be satisfied are sufficiently intelligent, competent and prudent to control and manage their affairs and interests, and also all persons without families.

Second, those families the heads of which are not competent and proper persons to be entrusted with their shares of the money, payable under this argreement; and,

Third, those who are orphans, idiots, or insane.

Upon the presentation of accurate lists of the second and third classes the Wyandot council was to designate the proper person or persons to receive and care for moneys due to persons of the second class, and those who were to have the guardianship of the individuals of the third class. The commissioners were also to prepare a list of those who should apply for temporary exemption from citizenship and for the continued protection and assistance of the United States. Duly authenticated copies of all lists were to be filed with the Commissioner of Indian Affairs, with the secretary of the Territory of Kansas, and with the clerk of the county in which the Wyandot lands were situated. Article four of the treaty reads:

Article 4. On the receipt, by the Commissioner of Indian Affairs, of the plat and schedule, lists of persons, and of the first proceedings of the Wyandott council, mentioned in the next preceding article, patents shall be issued by the General Land-Office of the United States, under the advisement of the Commissioner of Indian Affairs, to the individuals of the Wyandott tribe, for the lands severally assigned to them, as provided for in the third article of this agreement, in the following manner, to wit: To those reported by the commissioners to be competent to be entrusted with the control and management of their affairs and interests, the patents shall contain an absolute and unconditional grant in fee-simple; and shall be delivered to them by the Commissioner of Indian Affairs, as soon as they can be prepared and recorded in the General Land-Office; but to those not so competent, the patents shall contain an express condition, that the lands are not to be sold or alienated for a period of five years; and not then, without the express consent of the President of the United States first being obtained; and the said patents may be withheld by the Commissioner of Indian Affairs, so long as, in his judg-

> ment, their being so withheld may be made to operate beneficially upon the character and conduct of the individuals entitled to them.
>
> None of the lands to be thus assigned and patented to the Wyandotts, shall be subject to taxation for a period of five years from and after the organization of a State government over the territory where they reside; and those of the incompetent classes shall not be aliened or released for a longer period than two years, and shall be exempt from levy, sale, or forfeiture, until otherwise provided by State legislation, with the assent of Congress.

A treaty of February 22, 1855 (10 Stat. 1165) with the Chippewa of Minnesota, authorized the President to have their lands surveyed:

> and assign to each head of a family, or single person over twenty-one years of age, a reasonable quantity of land, in one body, not to exceed eighty acres in any case, for his or their separate use; and he may, at his discretion, as the occupants thereof become capable of managing their business and affairs, issue patents to them for the tracts so assigned to them, respectively; said tracts to be exempt from taxation, levy, sale, or forfeiture; and not to be aliened or leased for a longer period than two years, at one time, until otherwise provided by the legislature of the State in which they may be situate, with the assent of Congress. They shall not be sold, or alienated, in fee, for a period of five years after the date of the patents; and not then without the assent of the President of the United States being first obtained. Prior to the issue of the patents, the President shall make such rules and regulations as he may deem necessary and expedient, respecting the disposition of any of said tracts in case of the death of the person or persons to whom they may be assigned, so that the same shall be secured to the families of such deceased person; and should any of the Indians to whom tracts may be assigned thereafter abandon them, the President may make such rules and regulations, in relation to such abandoned tracts, as in his judgment may be necessary and proper.

The Winnebago treaty of February 27, 1855 (10 Stat. 1172) contained practically the identical provisions of the treaty of the same year with the Mississippi Chippewa, last cited.

A treaty of June 9, 1855 (12 Stat. 945) with the Wallawalla, Cayuse, and Umatilla of Washington and Oregon, provided for forty acres to each person over twenty-one years of age; sixty acres to a family of two; eighty acres to a family of three and not over five; one hundred and twenty acres to a family of six or not over ten; and twenty acres for each three additional members over ten in number; with other provisions similar to those in the Umpqua and Kalapuya treaties of 1854 and 1855. A treaty of June 25, 1855 (12 Stat. 963) with the tribes of middle Oregon, contained the same provisions as the Wallawalla treaty of the same month and year.

Article six of treaties of June 9, 1855 (12 Stat. 961) with the Yakima; June 11, 1855 (12 Stat. 957) with the Nez Percés; and July 16, 1855 (12 Stat. 975) with the Flatheads, respectively, each authorized the survey of lands and assignment of lots to individuals on the same terms and subject to the same regulations as were provided in the sixth article of the Omaha treaty of March 16, 1854, so far as the same might be practicable.

A treaty of July 31, 1855 (11 Stat. 621) with the Ottawa and Chippewa of Michigan and one of August 2, 1855 (11 Stat. 633) with the Chippewa of Saginaw in the same State both provided for eighty acres to each head of a family, forty acres to each single person over twenty-one years of age, eighty acres to each family of two or more orphan children under twenty-one years of age, and forty acres to each single orphan under twenty-one years.

All of the treaties of 1854 and 1855 were made under the administration of Commissioner George W. Manypenny and, while those with Indians living west of the Rocky Mountains were actually negotiated by either Governor Isaac I. Stevens, who was also Superintendent of Indian Affairs for Washington Territory, or Joel Palmer, Superintendent of Indian Affairs for Oregon Territory, or by both of them, as in the case of the two treaties with the Wallawalla and the Nez Percés, all of them may be considered as reflecting the Manypenny policy. Referring to the two treaties of 1855 with the Ottawa and Chippewa of Michigan, in his annual report of November 26, 1855, Manypenny said: [9]

> New conventional arrangements, deemed requisite with the Indians in the State of Michigan, have been entered into with the

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[9] Ann. Rep. Com. Ind. Aff. 1855, p. 1.

> confederated tribe of Ottawas and Chippewas, the Chippewas of Saginaw, and the small band of Chippewas of Swan Creek. By them the Indians are to have assigned permanent homes, to be hereafter confirmed to them, in small tracts, in severalty. Such guards and restrictions are thrown around their lands and limited annuities as cannot fail, if faithfully regarded and respected to place them in comfortable and independent circumstances.
>
> It is expected that similar arrangements will be made with the Pottawatomies of Huron, and remnants of other Indian tribes in Michigan, in time, if approved, to be acted on and ratified during the approaching session of Congress.
>
> It is gratifying to know that the Indians of Michigan are advancing in the arts of civilized life, increasing in numbers, and many of them now exercising the privileges and discharging the duties of citizens of the State, to which, by her humane and liberal policy, they may all in time attain.

These words of Manypenny's third annual report as Commissioner disclose a naive conviction on his part that the solution of the Indian problem was very presently to be effected through the assignment of lands in severalty to the Indians and the abandonment of tribal relationships by them. Although there was considerable variation in the terms of treaties made during Manypenny's administration, this variation is not indicative of inconsistency but rather of efforts to arrange amicable terms with the various tribes.

In his last annual report, submitted under date of November 22, 1856, Commissioner Manypenny included the following statement (p. 20)

> Since the 4th, of March 1853, fifty-two treaties with various Indians tribes have been entered into. These treaties may, with but few exceptions of a specific character, be separated into three classes: first, treaties of peace and friendship; second, treaties of acquisition, with a view of colonizing the Indians on reservations; and third, treaties of acquisition, and providing for the permanent settlement of the individuals of the tribes, at once or in the future, on separate tracts of land or homesteads, and for the gradual abolition of the tribal character. The quantity of land acquired by these treaties, either by the extinguishment of the original Indian titles, or by the re-acquisition of lands granted to Indian tribes by former treaties, is about one hundred and seventy-four millions of acres. Thirty-two of these treaties have been ratified, and twenty

> are now before the Senate for its consideration and action. In no former equal period of our history have so many treaties been made, or such vast accessions of land obtained.

In duscussing the inadequacy of existing laws relating to Indian affairs, Manypenny remarked in this report: (p. 21)

> The rage for speculation and the wonderful desire to obtain choice lands, which seems to possess so many of those who go into our new territories, cause them to lose sight of and entirely overlook the rights of the original inhabitants. The most dishonorable expedients have, in many cases, been made use of to dispossess the Indian; demoralizing means employed to obtain his property; and, for the want of adequate laws, the department is now often perplexed and embarrassed, because of inability to afford prompt relief and apply the remedy in cases obviously requiring them.

Commissioner Manypenny discussed at length the effect upon the Indians in Kansas of the bitter controversy over slavery that was being carried on between the whites, pointed out the wrongs that the Indians had suffered in Kansas and elsewhere and closed his report with a stirring appeal for a sympathetic understanding of the Indians and an attitude of brotherly consideration and just recognition of their rights by their neighbors and by the nation.

On April 17, 1857, James W. Denver of California became Commissioner of Indian Affairs and in the annual report submitted by him under date of November 30, 1857 is found the following: (p. 4)

> I concur fully with those of my predecessors who have stated that there have been too (two) great and radical mistakes in our system of Indian policy—the assignment of an entirely too large body of land in common to the different tribes which have been relocated, and the payment of large money annuities for the cessions made by them; the first tending directly to prevent the Indians from acquiring settled habits and an idea of personal property and rights, which lie at the very foundation of all civilization; the second causing and fostering a feeling of dependence and habits of idleness, so fatally adverse to anything like physical and moral improvement. With regard to the Indians in Nebraska and Kansas especially, it is all important that these mistakes shall not be perpetuated or repeated. They are in a critical position. They have

> been saved as long as possible from the contact and pressure of white population, which has generally heretofore been regarded as fatal to the Indian. They are now becoming rapidly surrounded by such a population, full of enterprise and energy, and by which all the surplus lands, as far west as any of the border tribes reside, will necessarily soon be required for settlement. There is no place left where it is practicable to place these tribes separate and apart by themselves. Their destiny must be determined and worked out where they are. There they must advance and improve, and become fitted to take an active part in the ennobling struggles of civilization; or, remaining ignorant, imbecile and helpless, and acquiring only the fatal vices of civilized life, they must sink and perish, like thousands of their race before them. A solemn duty rests upon the government to do all in its power to save them from the latter fate, and there is no time to be lost in adopting all necessary measures to preserve, elevate and advance them.
>
> With large reservations of fertile and desirable land, entirely disproportioned to their wants for occupancy and support, it will be impossible, when surrounded by a dense white population, to protect them from constant disturbance, intrusion and spoliation by those on whom the obligations of law and justice rest but lightly; while their large annuities will subject them to the wiles and machinations of the inhuman trafficker in ardent spirits, the unprincipled gambler, and the greedy and avaricious trader and speculator. Their reservations should be restricted so as to contain only sufficient land to afford them a comfortable support by actual cultivation, and should be properly divided and assigned to them, with the obligation to remain upon and cultivate the same. The title should remain in the tribe, with the power reserved to the government, when any of them become sufficiently intelligent, sober, and industrious, to grant them patents for the lands so assigned to them, but leaseable or alienable only to members of the tribe, until they become so far advanced as to be fitted for the enjoyment of all the rights and privileges of citizens of the United States. Their annuities should be taken and used for the erection of comfortable residences and requisite outbuildings, and otherwise in gradually improving their farms.

On June 12, 1858 the appointment of Charles E. Mix, who was credited to the District of Columbia, was confirmed by the Senate as Commissioner of Indian Affairs. In his annual report of November 6, 1858 Mix said: (p. 6)

> Experience has demonstrated that at least three serious, to the Indians, fatal errors have, from the beginning, marked our policy

> toward them, viz; their removal from place to place as our population advanced; the assignment to them of too great an extent of country, to be held in common; and the allowance of large sums of money, as annuities, for the lands ceded by them. These errors, far more than the want of capacity on the part of the Indian, have been the cause of the very limited success of our constant effort to domesticate and civilize him. By their frequent changes of position and the possession of large bodies of land in common, they have been kept in an unsettled condition and prevented from acquiring a knowledge of separate and individual property, while their large annuities, upon which they have relied for support, have not only tended to foster habits of indolence and profligacy, but constantly made them the victims of the lawless and inhuman sharper and speculator.

Mix then contrasted the northern and southern tribes and ascribed the industry and advancement of the latter to the permanency of residence, surrounded by whites and continued: (p. 6)

> Our present policy, as you are aware, is entirely the reverse of that heretofore pursued in the three particulars mentioned. It is to permanently locate the different tribes on reservations embracing only sufficient land for their actual occupancy; to divide this among them in severalty, and require them to live upon and cultivate the tracts assigned to them; and in lieu of money annuities, to furnish them with stock animals, agricultural implements, mechanic shops, tools and materials, and manual labor schools for the industrial and mental education of their youth.

Commissioner Mix repeated the recommendation made by previous commissioners that legislation be enacted to commute old treaty obligations into objects and purposes that would be more beneficial to the Indians than the carrying out of the treaty stipulations. He remarked that the usufruct right of the Indians to the lands that they occupied had not been recognized in Oregon and Washington to the same extent as elsewhere and stated that: (p. 9)

> The policy of concentrating the Indians on small reservations of land, and of sustaining them there for a limited period, until they can be induced to make the necessary exertions to support themselves, was commenced in 1853, with those in California. * * * The operation thus far in carrying out the reservation system, can

properly be regarded as only experimental. * * * From accompanying reports, it would seem that in California a greater number of reservations have been established and a much heavier expense incurred than the condition and circumstances of the Indians required, as has probably been the case in respect of all the reservations or Indian colonies that have been commenced. In the outset it was the confident expection that the heavy expenses attending these colonies would repidly diminish, from year to year, and that, after the third year at farthest, they would require but little if any outlay on the part of the Government, the Indians in the meantime being taught to support themselves by their own exertions. This expectation has not been realized; neither have the expenses been diminished nor the Indians been materially improved. * * * No more reservations should be established than are absolutely necessary for such Indians as have been, or it may be necessary to displace, in consequence of the extension of our settlements, and whose resources have thereby been cut off or so diminished that they cannot sustain themselves in their accustomed manner. Great care should be taken in the selection of the reservations, so as to isolate the Indians for a time from contact and interference from the white. They should embrace good lands, which will repay the effort to cultivate them. No white person should be suffered to go upon the reservations, and after the first year the lands should be divided and assigned to the Indians in severalty, everyone being required to remain on his own tract and to cultivate it, no persons being employed for them except the requisite mechanics, to keep their tools and implements in repair, and such as may be necessary, for a time, to teach them how to conduct their agricultural operations and to care for their stock. They should also have the advantage of well conducted manual labor schools for the education of their youth in letters, habits of industry, and a knowledge of agriculture and the simpler mechanic arts.

In a letter of September 28, 1858 to Commissioner Mix, W. J. Cullen, Superintendent of Indian Affairs for the Northern Superintendency at St. Paul, Minnesota, in discussing the Sioux of the Mississippi wrote;[10]

Here the amount of the annuities paid them, with their other funds, render practicable the project of building houses for each eighty acres, which shall be made the homestead of each family and furnished with the necessary domestic utensils, rendered by

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[10] Ann. Rep. Com. Ind. Aff. 1858, p. 38, Accom. Paper No. 9.

> the law inalienable for a period extending beyond the life, at least, of one or two generations; and the agricultural operations, confined to the ploughing of a certain number of acres on each parcel, will in the course of two or three years, exhibit a settlement, not in villages or wigwams, or temporary hovels, but, scattered over the large available reserve, present a pleasing prospect of agricultural growth that must be productive of great good and progress.

With the advent of the Buchanan administration, Jacob Thompson of Mississippi had become Secretary of the Interior. In his first annual report, dated December 1, 1859, Secretary Thompson announced that: (p. 9)

> The policy heretofore adopted of removing the Indians from time to time, as the necessities of our frontier population demanded a cession of their territory, the usual consideration for which was a large annuity to be divided among them per capita had a deleterious effect upon their morals and confirmed them in their roving idle habits. This policy we are now compelled by the necessity of the case to change. At present, the policy of the government is to gather the Indians upon small tribal reservations, within the well-defined exterior boundaries of which small tracts of land are assigned in severalty, to the individual members of the tribe, with all the rights incident to an estate in fee-simple, except the power of alienation. This system, wherever it has been tried, has worked well, and the reports of the superintendents and agents give a most gratifying account of the great improvement which it has effected in the character and habits of those tribes which have been brought under its operation. The internal struggle which the red man necessarily undergoes in adopting the resolution to throw away the blanket, the scalping knife and the implements of the chase and in lieu thereof to wear a dress and devote himself to pursuits which he has been taught to consider degrading, is terrible; and if he emerges from it victorious, he becomes a new man. Wherever separate farms have been assigned within the limits of a tribal reservation to individual Indians, and the owners have entered into possession, a new life is apparent, comparative plenty is found on every hand, contentment reigns at every fireside, and peace and order have succeeded to turbulence and strife. The greatest progress in this respect during the past year has been made in the agencies of the northern superintendency.
>
> This is now adopted as the fixed policy of the government, and, sanctioned by Congress, has been the leading idea in all the treaties recently negotiated with the Indians.

In this report Secretary Thompson also referred to the necessity of abandoning the Indian reserves in Texas and removing the Texas Indians to lands of the Choctaw and Chickasaw because of the hostility of the Texan settlers, who threatened to exterminate the Indians if they remained in Texas. In referring to the reservation plan as tried in California, Thompson said: "Expectations have not been realized." He also remarked that: "Neither the government of the United States, nor the State of California, recognizes in the Indians any right of exclusive occupancy to any specific lands."

In his report to President Buchanan for the fiscal year ending June 30, 1860, Secretary Thompson again expressed his views on Indian affairs, saying: (p. 6)

> With the wild tribes in the heart of the continent, in Arizona and in California, constituting, possibly, the majority, we have no treaties whatever. With respect to policy, then, it is obvious that the Indians must be divided into two classes—those with whom we have treaties, and those with whom we have not.
>
> Again, the treaty or annuity Indians may be arranged in two divisions. With one we have treaties of amity, and we pay them annuities, either in money, goods, or provisions, or perhaps all three, for a longer or shorter period, but without recognizing their title to any particular tract of country. We not only pay annuities to the other, but we recognize their title to particular tracts of country, described by metes and bounds, and guaranty them undisturbed possession of the same forever. This latter class, again, must be subdivided into those who hold their lands in common, whether in fee, or by the usual Indian title, and those whose lands are held in severalty by the individual members of the tribe. There is yet a further distinction to be made between those cases where the several reservations are in a compact body, surrounded by a well-defined exterior boundary, constituting them a tribal reservation, over which the intercourse laws can be enforced, and those in which the individual reservations are scattered among the white settlements, and subjected to the operation of the laws of the State or Territory in which they are situated.
>
> Of those Indians to whom reservations are secured by treaty, it is to be observed that those who hold their lands in common, and those who hold in severalty, but whose reservations are scattered about among the white settlements, have made, and are making little or no progress. There are of course exceptions, but they are few in number, and result from fortuitous circumstances. Ex-

perience has satisfied me that two conditions are indispensable to the success of any policy, looking beyond the mere immediate and temporary relief of the Indians. If it is designed to effect a radical change in their habits and modes of life, and establish for them a permanent civilization, the idea of separate, or rather private property, and isolation must form the basis alike of our diplomacy and our legislation.

Private property in the soil and its products stimulates industry by guarantying the undisturbed enjoyment of its fruits, and isolation is an effectual protection against the competition, the cunning, and the corrupting influences of the white man. This is not mere theory, it has the sanction of successful application in practice; and notable examples may be cited—those of the Winnebago and Sisseton and Wahpeton Sioux, reclaimed in an incredibly short time by this policy, from the idleness, drunkenness, and degradation for which they were conspicuous. And it is no valid objection to the force of the illustration to say that the same results have been produced among the Choctaws, Chickasaws and Cherokees, who still hold their lands as tenants in common. The tenure in common is but nominal with those tribes; every member of them is protected in the undisturbed possession of the home he has made for himself in the common domain and his right of property in his fields and the crops he raises on them is as sacredly respected as if he held them in fee and in severalty. Nowhere are the intercourse laws so rigidly enforced as among these tribes; and it is to this and the practical recognition of the right of private property in the soil and its products that the great prosperity of these tribes is due. I am strengthened, then, in the conviction expressed in my last annual report, that the only plan that holds out any hope for the decaying aboriginal races, is to confine them to small tribal reservations, having well-defined exterior boundaries, so that the intercourse laws can be enforced thereon, and to divide these reservations into farms of moderate dimensions, to be held in severalty by the individual members of the tribe, with all the rights incident to an estate in fee-simple, except that of alienation. Annuities should be paid, not in money but in goods, provisions, agricultural implements, and seeds, and authority should be given to the agents to discriminate in their distribution between the industrious and the idle, the orderly and thriftless. These ideas form the basis of all the Indian treaties which have been negotiated during your administration, and I would suggest that they should be established by law as the fixed policy of the government.

The colonization system which was tried in California and Texas, under the direction of Congress, and from which I at one time hoped for the most favorable results, has proved an entire

> failure. It is expensive and radically defective. To promise for it any success, one of two modifications must be introduced. Either the overseer or agent must have right of property in the products of the reservation, and be allowed to retain for his private use and benefit the surplus which may remain after feeding and clothing the Indians, or each Indian must work for himself and gather for himself, and the idle and thriftless must be made to feel the effects of their idleness and unthriftiness, and to realize practically the difference between him who sows and reaps and him who does not.

The administration of Indian Affairs had now been in the Department of the Interior for a full decade, but many persons and a considerable part of the public press were not satisfied with the accomplishments of the Department. A vigorous agitation for the return of Indian administration to the War Department had arisen. This movement was apparently sponsored by those who felt that a firmer and less compromising policy should be applied to certain tribes described by Thompson as " wild tribes in the heart of the continent." It is evident that Thompson was not favorably impressed with the administration of the Indian Service in his own department, for in his annual report for 1860 he said: (p. 10)

> In the administration of our Indian affairs the aid of the military arm of the government is often indispensable, and at all times a cordial co-operation and a friendly understanding between the Indian agents and the officers of the army are required for the success of this service. I am of the opinion, therefore, that the supervision of the Indian Bureau might be retransferred to the War Department with great propriety and advantage. If all the officers of the government, who are brought in contact with the Indians, and intrusted with their business, were under immediate order and control of one department, they would necessarily feel a more direct responsibility, which would certainly secure greater efficiency.

One need not assume from these remarks by the Secretary of the Interior that the administration of the Indian Service was inefficient or below the standard that was to be expected with the limited appropriations allowed and with the handicaps that were encountered because of political influence and a general public indifference, or open hostility, toward the Indian

Service. It is also quite possible that Secretary Thompson, like some of his successors, found it convenient for political purposes to exhibit but luke warm support for a bureau of his Department that, from the very nature of its dealings with intimate human relationships, was peculiarly subject to public criticism. It takes a high degree of moral courage for a public official to support firmly a subordinate when the latter is being bitterly attacked by the public press or even by influential or noisy individuals. It is much easier under such circumstances to step gracefuly aside or seek a way out by conceding to the opposition more than is deserved or may honorably be granted. It appears that Secretary Thompson was largely influenced by a sympathy with the group who believed in Jacksonian firmness in handling Indian Affairs.

However, there were many who thought that reasonable progress was being made in the civilization of the tribes and hoped that by the extension of pacific and educational policies the Indians would be gradually induced to overcome their roving and indolent habits. This view was reflected in the first annual report of Commissioner A. B. Greenwood from the State of Arkansas, who, after observing that the 9,000 Indians of Revolutionary times in New York State had in 1859 been reduced to 4,000, said of these Indians: (p. 9)

> They are comfortably located on reservations in different parts of the State, where laws specially enacted for the purpose, effectually protect them in their persons and property. The State has also extended to them the advantages of her free school system, there being twenty-one schools of that description in successful operation among them, six of which are taught by Indians. It is hoped that this good example of considerate and philanthropic regard for the rights, interest and welfare of the Indians, will be followed by the other States within whose limits portions of the race remain permanently located.

In his annual report of November 30, 1860 to Secretary Thompson, Commissioner A. B. Greenwood said that during the Buchanan administration lands had been (p. 14)

> allotted in severalty to, and patented in favor of, 557 Wyandots, 720 Shawnees, 230 Miamis and 73 members of the confederated

> bands of Kaskaskias, Peorias, Piankashaws and Weas. The Wyandots possess a fee simple title to the lands assigned to them, and the other tribes specified have authority to dispose of their lands under the provisions of the eleventh section of the act of Congress of March 3, 1859, subject to the regulations of the Department of Dec. 19, 1859, which require the approval of the Secretary of the Interior, in order to vest a complete title in the purchaser. Thus patents have emanated in favor of 1580 Indians, and in addition thereto, lands have been assigned to 389 Indians of mixed blood, under the provisions of the tenth article of the treaty of Prairie-du-Chien, of July 15, 1830, for which it is understood that patents will be issued at an early date. Lands have also been allotted to thirty-two New York Indians, and eighty-four members of the United bands of Swan Creek and Black River Chippewas, and Christian and Munsee Indians of Kansas, who have no power of alienation, but merely hold the lands by certificates of allotment issued by this bureau, making in the aggregate 2,085 Indians to whom lands have been assigned, in severalty, during this administration.

Greenwood then referred to the issuance of scrip to Sioux half-breeds under the 9th article of the treaty of July 15, 1830 and the act of July 17, 1854. In the same report (p. 25) Greenwood referred to the claims of the Office of Indian Affairs in 1849 and again in 1851 that with proper development the Indian would take his place along side his white brother and remarked:

> And, then, perhaps for the first time, the idea was entertained that any plan of civilization would be defective if it did not provide in some efficient manner for concentration and domestication.
>
> Upon that suggestion my predecessors have acted, and it has become the policy to locate a tribe within such limits as would not at first, or too suddenly, change the modes and manners of hunter life for purely agricultural, yet, at the same time, compel the members to labor in part for subsistence; and, as they became habituated to labor, gradually to restrict their possessions and finally to divide their reservations in severalty, giving to them distinct and separate farms, and securing to them the comforts of life from the results of their own industry.
>
> The reports from the several agencies confirm the wisdom of this policy; and although much distrust has been manifested in the system by others, I am confident of its ultimate success.

Commissioner Greenwood then described in some detail the success of the system among the Dacotahs (Dakota), or Sioux, with whom the practice of colonization had been begun in 1858.

In 1861 Caleb B. Smith of Indiana became Secretary of the Interior and William P. Dole of Illinois became Commissioner of Indian Affairs by choice of President Lincoln. In his first annual report Commissioner Dole, speaking of the Sisseton and Wahpeton Sioux, said: (p. 15)

> Some of the Sioux who are located upon reservations have made a fair beginning in the customs of civilized life. They have adopted the customs of the whites, and rely for a living upon the arts of husbandry. This class is known as 'Farmer Indians'; a term which distinguishes them from the other class known as 'Blanket Indians.' The Farmer Indians are met at each step in their endeavors to attain the art of civilization by the constant opposition of the Blanket Indians, who regard them as innovators upon their ancient customs, wanting manliness, a discredit to their race, and (to use a hackneyed expression) 'degenerate sons of noble sires.' So great is this opposition that it requires on the part of the 'Farmers' the exercise of great moral courage, as well as the countenance and support of the government, through its agents and forces, to enable them to persevere in their praise-worthy endeavors. The policy of allotting lands in severalty to the Indians, first adopted in 1858, is practiced in the Sioux and other reservations in the northern superintendency, and, as is well attested, with marked success. Schools have been established upon both the ordinary and the manual labor system, the result of which is not so gratifying as is to be desired, and clearly prove that a system is demanded for the instruction of Indians widely different from any yet adopted.

In his annual report for 1861 Commissioner Dole discussed at some length the Indians of New Mexico, who had presented a great problem subsequent to the extension of the jurisdiction of the United States over the immense area acquired as a result of the War with Mexico. Among other observations upon this subject Dole remarked: (p. 19)

> The Mexican government, formerly in possession of the Territory, differed widely from ours in its policy and views in relation to the rights of the Indians in the soil. That government regarded itself as the absolute and unqualified owner of the soil, and held

that the Indians had no usufructuary or other title therein which it was in any manner bound to respect.

After discussing the failure of the Mexican government to make treaties with the Indians and the succession of the United States to all the rights of Mexico through the acquirement of this territory the Commissioner said: "Be this as it may, the necessity that the Indians of this superintendency (New Mexico) shall be concentrated upon suitable reservations is imperative."

He said that two plans had been suggested: one to set apart from the public domain ample and suitable reservations and make liberal appropriations to locate the Indians thereon; "the other is to acknowledge that they held the public domain by the same tenure that Indians held in the other Territories, negotiate treaties with them for the extinguishment of their title and thus provide a fund for the purposes above mentioned." The Commissioner favored the latter method because both would be attended by the same expense and the latter method would forever silence the claims of the Indians. He said that similar conditions existed in California. However, no claim to the public domain by Indians living in New Mexico, Arizona and California was ever recognized by the United States. The right of the Pueblo Indians to the small grants that had been made to them by the Spanish authorities was not questioned and from time to time reservations and additions thereto were assigned to various other tribes by executive orders or by special legislation. The Indian title to such reservations within the area ceded to the United States at the close of the war with Mexico has ever been the same as that of the Indians to similar reservations in other parts of the western United States. It has been conceded that the Pueblos held the full fee title to lands within the areas granted to them before the Mexican cession to the United States.

In his annual report of November 26, 1862, Commissioner Dole again expressed his conviction as to the need of confining Indians upon reservations; described the Sioux and Chippewa war in Minnesota; indicated that depredations by the Navaho were common and referred to a provision in the last Indian appropriation act directing the Secretary of the Interior "to inquire into the expediency of reducing the Indian reservations in California to two in number."

Although President Lincoln had taken a part in the Black Hawk War and no doubt had occasion to know from those with personal experience how cruel the Indian could be when aroused, we may be sure that he carried in his heart no bitterness toward the Indian race; and Commissioner Dole, himself, in his annual report for 1861, had shown his lack of sympathy with a California law for indenturing Indians which had recently been passed and which he characterized as practically amounting to slavery. It appears that the conduct of certain tribes of Indians constituted a powerful influence in developing public opinion to the effect that the Indians must be restricted to definite reservations and not allowed to roam about and engage in depredations upon the property and lives of other tribes and of the whites.

In his third annual report, dated October 31, 1863, Commissioner Dole declared: (p. 6)

> I have frequently urged the propriety of the system of allotting lands to Indians, to be held by them in severalty, in the strongest terms of commendation, and in this regard my experience and observation have not in the least changed my opinion. Indeed, it seems to me perfectly manifest that a policy designed to civilize and reclaim the Indians within our borders, and induce them to adopt the customs of civilization, must of necessity embrace, as one of its prominent features, the ideas of self-reliance and individual effort, and, as an encouragement of these ideas, the acquisition and ownership of property in severalty. It is equally apparent from the antecedents and the present surroundings of the Indians that their first efforts for the attainment of civilization should be directed toward the acquisition of a knowledge and practice of the simple arts of husbandry and pastoral life. From these two propositions it is easy to arrive at the conclusion that the theory of allotments of land to be held by the Indians in severalty is correct. The error into which I think we have fallen, in the practice of this theory has been in making a general allotment to all the individuals of a band or tribe who could be induced to make a selection without regard to the disposition of the allottee to occupy the land

> allotted him, his previous good conduct, or his ability to cultivate or derive any benefit therefrom. This practice should be abandoned, and in its stead we should make the allotment of a tract of land to the Indian a special mark of the favor and approbation of his 'Great Father,' on account of his good conduct, his industry, and his disposition to abandon the ancient customs of his tribe, and engage in the more rational pursuits of civilization.

In discussing the subject of land tenure among the Indians, Dole said: (p. 28)

> No very high degree of civilization can be attained by a tribe, as such, or by any of its individual members, while the property, personal and real, is held in common. This system operates as an indirect encouragement to idleness and its attendant vices, and is, at the same time, wanting in the encouragement which, under the system of individual ownership, is afforded to the industrious and enterprising by the comforts and conveniences resulting from their labor.

The practice of assigning separate tracts of land to individual Indians had been experimented with for nearly a half century prior to 1863. Public officials and others recognized that many of the Indians to whom lands were assigned failed to cultivate them and to achieve economic independence yet the opinion was held quite generally that only through the establishment of the Indians upon individual tracts of land could they become self-supporting. The previous policy was continued during the Lincoln administration. In fact there can be little question that the impulse toward the allotment of land in severalty to the Indians had been greatly quickened during the first three years of President Lincoln's term of Office. On May 20, 1862 (12 Stat. 392) President Lincoln had approved the action of Congress in passing a bill under which any citizen of the United States might acquire a homestead of 160 acres of land upon the vacant public lands of the United States.

From the earliest days of the Republic the disposal of the public lands had presented many difficulties. An act of May 18, 1796 (1 Stat. 464) had provided for the sale of such lands at public auction in sections of 640 acres at not less than two dollars per acre, one fourth of the purchase money to be paid at the time of purchase and the remainder within three years. The deferred payments were not made in many instances and relief acts were passed at almost every session of Congress. An act of April 24, 1820 (3 Stat. 566) abolished the credit plan, authorized the selling of the land in quarter sections of 160 acres each, and fixed the minimum price at one dollar and twenty-five cents per acre. In 1824 Senator Benton of Missouri introduced a bill designed to grant pre-emption rights to actual settlers, with graduated prices for different qualities of land. No action was taken on Benton's bill but the agitation for some action increased. Subsequently millions of acres were granted to the States and to individuals and companies for purposes of internal improvements. In the early thirties very extensive speculation in public lands began and played no small part in bringing on the economic crash of 1837. About 1840 the demand for the turning over of the federal public lands to the States was revived. However, there was strong opposition to this plan and finally on September 4, 1841 (5 Stat. 453) a new preemption act was passed under which actual settlers over twenty-one years of age, upon certain terms of residence and improvement, might have the preference right to purchase public land in tracts of 160 acres, the price varying with the situation and quality of the land. This act did not settle the question. There was an urgent demand for cheap land and in the platform adopted by the Free Soil Democrats at their convention in Pittsburgh, Pa., in August, 1852 there was a plank reading as follows:

> That the public lands of the United States belong to the people, and should not be sold to individuals, nor granted to corporations, but should be held as a sacred trust for the benefit of the people and should be granted in limited quantities, free of cost, to landless settlers.

From this time the question of policy regarding the federal public lands had a more decided political aspect. The public became greatly interested and for a period of ten years the question of public land disposal occupied a position in the press and in public debates scarcely less prominent than the slavery question. And the question merited all the attention that was given to it. Immense areas of land east of the Mississippi had not yet been purchased at public sale or acquired under the numerous pre-emption laws, beginning with one of March 3, 1801. Hundreds of millions of acres of excellent agricultural lands included within the area covered by the Louisiana Purchase were still in government ownership; and other hundreds of millions of acres suitable for home purposes had recently been acquired as a result of the Mexican War. Well might the American electorate ask itself whether these lands were to become the subject of a speculative orgy, such as had preceded the panic of 1837, or should be devoted to the upbuilding of homes by bona fide settlers. After nearly ten years of discussion a bill finally passed both houses of Congress but on June 22, 1860, President Buchanan vetoed the bill, stating nine specific objections to the proposed legislation. Among these objections were the question of the constitutional power of Congress to make the large grants of public lands to the States that were provided for in the bill; the injustice of allowing future settlers to receive lands upon the payment of approximately eighteen cents an acre whereas the older settlers, who had developed the communities, had paid one dollar twenty-five cents per acre; the injustice to soldiers who had received land warrants for their services, the value of which would be greatly depreciated by the proposed act; the inducement that such an act would offer to speculators to arrange for "dummy" settlers upon the land; and the inducement that it offered to unrestricted immigration since it restricted the homestead privilege to American citizens who were heads of families while this restriction was not applicable to foreigners who had merely declared their intention to become citizens of the United States. An effort to pass the bill over the Presidential veto failed in the Senate. However, the country was demanding a change in the policy of disposing of public lands and the accession of Free Soil Democrats to the Republican party in the campaign and election of 1860 insured a reconsideration of the question in the Thirty-seventh Congress. A bill similar to the one vetoed by Buchanan was readily passed in the new Congress and, as has been stated, received the approval of President Lincoln on May 20, 1862. Concerning this act President Johnson, in his annual message to Congress in 1865 said:

> The homestead policy was established only after long and earnest resistance. Experience proves its wisdom. The lands in the hands of industrious settlers, whose labor creates wealth and contributes to the public resources, are worth more to the United States than if they had been reserved as a solitude for future purchasers.

An understanding of the public attitude regarding public lands is absolutely assential to a proper evaluation of the economic, political, and moral forces that were determining the course that the United States was to pursue with respect to Indian land tenure. The American people were becoming more and more impressed with their destiny as "a home for the free." The narrow view of "America for Americans" that had nourished the growth of the "Know-nothing Party" in the period from 1843 to 1858 was rapidly waning and the homestead act of 1862 contained a very positive encouragement to the home-loving classes of foreign nations to emigrate to the rich agricultural lands of the United States. As indicated in the above quotation from the public declaration of President Andrew Johnson, the emphasis was now being placed upon relatively small holdings of agricultural lands—the nation was deliberately creating homes in the belief that therein lay the surest security of national advancement.

Throughout the vast area north of the Ohio and west of the Mississippi and the Missouri and westward even to the Pacific Ocean, there were Indians living in comparative indolence and often suffering from great want because of their lack of provident habits and their failure to cultivate the soil. What could be more natural than that the general public should feel that the Indians also should, and in fact must, adopt the same habits of life as the settlers as soon as they could be brought to see the advantages of a settled and secure life over the precarious existence that was more or less inseparable from the life of the chase. Here was a basis for the strong advocacy of an allotment policy by Commissioner Dole and others.

However, it was realized by all who had been in close contact with the Indians that there were many tribes and groups who were not ready for a settled life, especially if they were to live in close contact with the influences toward intemperance that existed among the whites, and Commissioner Dole reveals a widespread viewpoint among those who lived near the western Indians when, in his report of October 31, 1863, in discussing the need of reservations, he said:

> At the Warmspring reservation are located the confederated tribes of middle Oregon, numbering from 1,000 to 1,200 souls. Their reservation is completely isolated, and on that account is valuable for the purposes for which it is intended.

Dole again disclosed this viewpoint in the following:

> The Siletz agency is the best adapted to the purpose for which it was located of any in the State. It is situated near the centre of the coast reservation, and is separated from the white settlements by a range of mountains nearly forty-five miles in extent, and is thereby, during the warm months, almost, and in the winter wholly isolated, so that Indians suffer but little from the vices which are constant upon the close proximity to the whites.

Further experience in dealing with Indians impressed upon Commissioner Dole the extreme reluctance of the Indians to accept the white man's civilization and the need for their segregation on reservations during an extended period of tutelage. In his fourth annual report, dated November 15, 1864 he wrote the following: (p. 1)

> From a glance at the history of our relations with the Indians, it will appear that we have been governed by the course of events, rather than by the adoption of a well-settled policy. * * *
>
> As our borders have been extended, and civilization with its attendant blessings has taken possession of the once unbroken wilderness-home of the Indians, treaties have been negotiated with them from time to time, and uniformly, and in almost innumerable instances, they have been recognized as a separate and distinct people, possessing in a restricted sense the peculiarities and characteristics of distinct nations. These treaties, with but few exceptions, have defined by natural metes and bounds the portion of the public domain which, from the time of their negotiations, were,

> by their terms, to be regarded as the separate and exclusive homes of the respective tribes with which they were negotiated; and it would form a not uninstructive subject of inquiry to investigate and define the various portions of the States, now exclusively occupied by our own people, which at times have been set apart under the sanction of solemn treaties for the *exclusive* use of the Indians; and if in connection with this inquiry the actual causes which have led to the removal of the different tribes from the districts thus formally dedicated to their use were investigated, it is greatly to be feared that, in a majority of instances, the result would not be highly creditable to our national reputation, for honor and integrity in the strict observance of the nations plighted faith. Be this as it may, it was perhaps inevitable, owing to the peculiar character of the Indians, that they should retire as their country became occupied by the whites. Thus far they seem to form an exception among all people whose territories have been over-run and wrested from them by a foreign race; for while it has been found in all other instances that a people thus situated have gradually assimilated and become incorporated with, and, as it were, absorbed by the superior nation, the Indians still adhere to their tribal organizations, and pertinaciously maintain their existence as distinct political communities.

In the above connection Commissioner Dole quoted profusely from the opinion of Chief Justice Marshall in the case of Johnson & Graham, lessee vs. William McIntosh (5 Condensed Rep. p. 515, 8 Wheaton 543). He then continued:

> The difficulty here suggested, of defining a line of policy in all respects adapted to the relations between the races, has not as yet been surmounted. It is, however, I think, clearly deducible from the foregoing statements, fully corroborated by our past history, that the white and the red man cannot occupy territory in common, and it follows that a policy which shall be adequate, and adapted to the requirements of the case must provide for each race a separate abiding place. It was this necessity, I doubt not, which originated the comparatively modern system of Indian reservations; and this system, so far as it goes, can but be regarded as a step in the right direction.

After again declaring that through close contact with the whites the Indians " more readily adopt the vices of our civilization than its virtues and advantages," Commissioner Dole referred to his last annual report in which he had recommended the concentration of the Indians and the limitation of the number of reservations as much as possible and stated: " It is believed the number need not exceed five, and that it may be confined to three."

To comprehend recommendations that the number and the size of reservations must be reduced and that many Indians be segregated and placed on reservations far removed from the whites, one must gain something of the perspective that the contemporaries of these Indians had. Before the English had been a half dozen years at Jamestown, Virginia, they had found it necessary to loan large quantities of corn to the natives during a severe winter to save them from starvation; and the early records of various settlements disclose extreme want at times among the Indians. It is known that suffering and even starvation was common among the Creeks and Seminoles while they were still living in the very mild climate of Florida. In his annual report for 1855 Commissioner Manypenny stated that the Indians of the Upper Missouri " are frequently reduced to extreme destitution, and even starvation." In Paper No. 24 accompanying the annual report of Commissioner Mix for 1858, Agent A. A. Redfield of the Upper Missouri Agency said that the Indian trade in buffalo robes annually decreased and in 1858 was not more than one-half what it had been ten or fifteen years earlier. In his report for 1864 Commissioner Dole declared: " There are now within the Indian country from fifteen to seventeen thousand destitute Indians." In his report for 1866 Commissioner D. N. Cooley in discussing the Utes said: " In July many of these Indians were near Tierra Amarilla in a condition of great destitution." The third annual report of the Board of Indian Commissioners, issued in 1871, stated that a large number of Hualapais (Walapi) Indians were destitute at Beal Springs Camp in Arizona Territory. These are but illustrations of conditions that seem to have been widespread. In the annual report of the Commissioner of Indian Affairs for 1852 had been printed a shocking report by a local missionary regarding cannibalism among the Indians west of Cass Lake, Minn. In Paper No. 17 accompanying the annual report of Commissioner Greenwood for 1860, C. K. Drew, the

Agent for the Chippewas of Lake Superior, had pointed out the great loss in time, energy and funds involved in an effort to furnish subsistence and other supplies with the tribes and bands widely scattered over a wilderness where there were only canoe routes and miserable trails.

Furthermore from 1850 onward the Apache and Navaho in New Mexico and Arizona, the Ute in Colorado and Utah, the Plains Indians from Indian Territory northward to Montana, and the interior tribes of Oregon and Washington had caused great annoyance to settlers and prospectors, with some reason, of course; and had undoubtedly killed many whites without provocation. Angered by the failure of the government to meet its agreements promptly, and emboldened by a knowledge of the inability of settlements to defend their families because of so many men drawn away to the South by the Civil War, the Minnesota Sioux massacred hundreds of defenceless whites in Minnesota in 1862-63. It is not surprising that the government officials began to consider methods of concentrating the Indians on reservations far removed from the whites.

In a report of September 7, 1865 from W. H. Waterman, Superintendent of Indian Affairs for Washington Territory to the Commissioner of Indian Affairs, printed as accompanying Paper No. 1, in Commissioner D. N. Cooley's report for 1865, we find a reflection of the views of the era:

> There is no doubt that the policy which tends most strongly to entice the Indians to abandon their wild and wandering mode of life, and come on the reservations and make their permanent abode there, is the best policy both for the Indians and for the white people.

The clamor of the western people for protection after the Indian depredations and massacres of the early sixties was met by declarations by others that such conduct on the part of the Indians had really been the result of encroachments on the part of the whites and crude and cruel methods on the part of the military forces. Serious criticism of the Indian Service and the War Department was voiced by caustic critics on all sides. On March 3, 1865 (13 Stat. 572) provision was made for a Joint

Commission of three Senators and four Representatives in Congress to investigate the treatment of Indians by the civil and military authorities.

The massacre of men by the Indians at Fort Kearney resulted in the appointment of a commission of military officers and civilians by the President on February 18, 1867 to visit the scene of hostilities and investigate the difficulties. Charges that the soldiers and the adventurers who were then going into the west were more at fault than the Indians were frequently and vehemently made and the American public, exhausted by the long War between the States, was in no mood to face unnecessary hostilities with the Indians. A conciliatory policy toward the Indians was demanded. By an act of July 20, 1867 (15 Stat. 17). Congress authorized the President to appoint a Peace Commission with a view to the stopping of Indian wars and the development of a more satisfactory method of dealing with Indians. The Commission, with Commissioner of Indian Affairs, N. G. Taylor of Tennessee, as Chairman, and seven other members, four of whom were high army officers, made their report on January 7, 1868, containing definite recommendations for a conciliatory policy toward the hostile tribes.

In his report for 1866 Commisioner Cooley referred to " the fact that many Indians who have received lands in severalty have found those lands sold from their possession at tax sales," said that appeals to higher courts in Kansas had resulted in the sustaining of the right of the State to tax such lands if they had been patented to the Indians whether the Indians had become citizens or not, but stated appeals were being taken to the Supreme Court of the United States. However, such cases do not seem to have greatly deterred the movement toward allotment of lands in severalty. In his report of August 20, 1867 to the Commissioner of Indian Affairs, which was printed as accompanying paper No. 13 with Acting Commissioner Mix's report for 1867, J. W. Perit Huntington, Superintendent of Indian Affairs in Oregon, quoted from his 1866 report as follows (p. 73)

> As Indians advance in knowledge of agricultural arts, the desire to own the lands they cultivate seems instinctively to arise.

> The ‘wild’ Indian never thinks of owning any particular spot of ground. His tribe owns a certain district of country, but individual Indians own nothing. But one of the first effects of putting him to work at cultivating the soil is to create a desire to own the land on which he works. This desire is commendable and ought to be encouraged. The best way to do this, in my judgment, is to allot to each adult male, or head of a family, who is sufficiently advanced to appreciate it, a tract of land, not exceeding eighty acres, the title to which shall descend to his heirs forever.
>
> The power of alienation should not be given, because too often the ignorance or weakness of the Indian would be taken advantage of by the more intelligent white man.

In his 1867 report Huntington said: “I have nothing to add to what was then said, except to repeat the recommendation and add to the force of it. In my judgment, no one thing can be done which will encourage and help them so much as this.”

> I have, since writing what I quote above, visited all the agencies in the superintendency, except Klamath and Alsea. I conversed with the Indians on this subject, and found them universally anxious that it should be carried into effect.

In referring to the settling of the Menominee upon their newly established reservation on the Wolf River in Wisconsin, Commissioner Greenwood in his annual report for 1859 said their agent reported: “that they desire to have their lands partitioned among them in severalty.” The Menominee had been in close contact with the Brotherton and Stockbridge and Munsee tribes who had received assignment of individual tracts on the east side of Lake Winnebago and later took patents to the same. The report of the Menominee agent, Mr. M. L. Martin for 1868, printed as accompanying paper No. 89, with Commissioner N. G. Taylor’s annual report for 1868, contains the following: (p. 293)

> One great hindrance in the effort to make useful members of society of persons of Indian descent, is the community of property recognized among them, and the control over both property and persons of their chiefs or headmen. * * *
>
> Lands, money, or other property, the common stock, and which should fall rightfully to all equally, are liable to be diverted to some purpose of no benefit, and contrary to the wishes of a large majority of the tribe.

In discussing the Oneidas in his report, Martin said: (p. 294)

> The sale of the valuable timber growing on their reserve furnishes abundant facilities of gratifying profligate habits among them, and this resource I have been unable to cut off, though urged to do so by the more considerate and worthy members of the tribe. Their lands are held as common property, and having no law to restrain them, each individual assumes the right, in opposition to the expressed wishes of the majority and the advice of their agent, to appropriate the fine timber growing upon it to his own private use, or to cut and dispose of it in market.

Such reports as this reveal the reason why the agents were frequently strongly in favor of the division of Indian lands in severalty. In nearly every group of Indians, as in nearly every group of white, or yellow or brown men, there are individuals of grasping and selfish tendencies whose avariciousness leads them to despoil their associates of the things that rightfully belong to them. From his association with the white race the Indian may have learned some refinements of dexterity in depriving his fellows of their legal and equitable rights, but there is small reason for believing that avarice, covetousness, deceit and trickery did not grow in his garden before he met the white race.

In his annual report for 1868 Secretary of the Interor O. H. Browning expressed his views regarding Indian land tenure as follows:

> The lands within the limits of reservations set apart for Indians who have made some progress in the arts of civilized life should not be held in common. When surveyed, the title in severalty to small tracts, designated by specific subdivisions, should be vested in individuals, with no power of alienating them except to members of the tribe.

Aroused by the report of the Peace Commission, which recited in considerable detail the cost of Indian wars, and by the continued hostility of several tribes, Congress passed an act of April 10, 1869 (16 Stat. 40) appropriating $2,000,000 as a special fund:

> to enable the President to maintain peace among and with the various tribes, bands, and parties of Indians; to promote their civiliza-

tion; bringing them, when practicable, upon reserations, and to relieve their necessities, and encourage their efforts at self-support. The Executive is also authorized to organize a board of commissioners, to consist of not more than ten persons, selected from among men eminent for their intelligence and philanthropy, to serve without pecuniary compensation, and who, under his direction, shall exercise joint control with the Secretary of the Interior over the disbursement of this large fund.

Under authority of this act President Grant appointed the Board of Indian Commisioners which functioned continuously as an advisory commission on Indian Affairs until it was abolished in 1933 by Executive Order of President Franklin D. Roosevelt.

The first annual report of this board, made late in 1869, contained six definite recommendations, as follows:

1. A better method of purchasing supplies for the Indian Service.
2. Allotment of Indian lands in severalty.
3. Abolition of the treaty system of dealing with tribes.
4. Establishment of schools and industrial training.
5. Appointments on merit and permanency in office.
6. Cessation of the payment of money annuities to Indians.

All of these proposed improvements had been previously discussed by those familiar with Indian Affairs but the Indian Service had been unable to obtain the authorizations and appropriations requested repeatedly. The moral effect of recommendations from a non-partisan board of philanthropic and public spirited citizens was of great assistance to the Indian Service, even though the board was not able to offer any new and startling reforms.

Neither the report of the Peace Commission nor the recommendations of the Board of Indian Commissioners could operate to subdue the ill-feeling that, for several years, had been developing in the western Plains Region. This animosity arose primarily because of the constant pressure exerted upon the Indians through the invasion of their hunting grounds by whites. These whites came as hunters, miners, traders and settlers. At the same time the transcontinental railroads were being constructed ever farther into the country which the Indians occupied. Some of the Indian leaders lost no opportunity to stir the passions of their followers and all too frequently the whites gave the Indians cause for renewed bitterness. In his annual report for the year 1870, Commissioner E. S. Parker of the Indian Bureau said: (p. 3)

> It is, without doubt true, that members of the Blackfeet in the summer and autumn of the past year, had been guilty of frequent depredations upon the property of citizens of Montana, and had committed several murders. Excited and indignant citizens of the Territory demanded that they should be allowed the privilege of organizing an armed party to punish the offenders.

In the winter of 1869-70, the War Department undertook a campaign, principally against the Piegan band of the Blackfeet, and in an attack on January 23, 1870, upon an encampment on the Marias River, United States cavalry, under the command of Lieutenant-Colonel E. M. Baker, killed 173 Indians, nearly one-third of whom were women and children. This engagement, denounced by some contemporary whites as a massacre, crushed the spirit of the Blood-Piegan Indians but did not enhance the reputation of the whites for fair-dealing.

The building of the Northern Pacific Railroad through the Dakotas and Montana was looked upon with great suspicion and opposition by the Sioux and other Northwest tribes and no assurances that were given them seemed to allay their fears that the coming of the iron horse meant the inevitable loss of the life to which they had been accustomed. Unquestionably they were right and unquestionably every possible peaceful means should have been used to overcome the bitterness that the encroachment of the white man's civilization aroused in their hearts. It must be admitted that not all white men were as considerate as they should have been and the machinery of the government moved so slowly that supplies that had been definitely promised did not arrive until weeks or months after the Indians had reason to expect them.

In his report for 1870 Commissioner Parker commented upon the seriousness of the building of railroads from the standpoint of the Indians, and anticipated that difficulties would arise with the Pimas and Maricopas if the proposed Southern Pacific Railroad were ever built. The men of that time seem to have understood fairly clearly the need for avoiding the things that would bring conflict between the races and distrust and despair to the Indians, yet events moved steadily on toward the undesired end. The conflict between the ways of the white man and those of the red man seemed an unavoidable one. Gradually the conclusion had been reached that those Indians who were not ready to undertake a settled agricultural life must be assigned reservations and be required to remain thereon; while those who had been longer in touch with the white man's ways and those who were by their own immemorial practices disposed to maintain settled habitations should receive farms and be assisted to engage in agricultural pursuits by which they might maintain themselves.

In his annual report for 1870 Commissioner Parker declared that many of the Indians were asking for allotments and approved the plan saying: (p. 9)

> The policy of giving to every Indian a home that he can call his own is a wise one, as it induces a strong incentive to him to labor and make every effort in his power to better his condition. By the adoption, generally, of this plan on the part of the government the Indians would be more rapidly advanced in civilization than they would if the policy of allowing them to hold their land in common were continued.

In his annual report for 1871, Acting Commissioner Clum indorsed the allotment of Indians saying it afforded an inducement to labor.

In the third annual report of the Board of Indian Commissioners, issued in the autumn of 1871, the Secretary referred to the need for civil law among the more advanced of the Indian tribes and declared:

> Many of the partially civilized Indians are ready for allotment of their lands in severalty, and this should be done as rapidly as possible under some regulation that would prevent the alienation of such lands for a term of years. * * *

The frequent removal of Indians has led to a great distrust of the Government with regard to them, and the fear of such removal has deprived them of all incentive to improve their lands with the belief that they should be protected in their rights.

Of the seventeen treaties, which provided for the allotment of land, made with various tribes during the ten year period from that of February 5, 1856 with the Stockbridges to that of March 6, 1865 with the Omaha, seven [11] used eighty acres as the unit for allotment to heads of families or to a single adult person; five [12] used one hundred sixty acres; four [13] used forty acres; and one [14] used twenty acres.

These treaties follow the same general trend as the numerous treaties made in 1854 and 1855, although only the Stockbridge and Munsee treaty was approved during the term of office of Commissioner Manypenny. Possibly special mention should be made of the Ottawa treaty of June 24, 1862 (12 Stat. 1237), the first article of which declared that all relations with the United States as an Indian tribe were to terminate five years from the date of ratification of the treaty, after which time the Ottawa were to have full citizenship. The Red Lake and Pembina treaty of August 2, 1863 (13 Stat. 667) provided for allotment to mixed-bloods only and that this allotment be made within the area ceded or upon the public lands. The Omaha treaty of March 6, 1865 (14 Stat. 667) modified the basis of allotment provided in the Omaha treaty of March 16, 1854 (10 Stat. 1043) to allow each head of a family one hundred sixty acres and to each male person, eighteen years or upward in age, not exceeding forty acres.

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[11] Treaties of Feb. 5, 1856 (11 Stat. 663) Stockbridge and Munsee; June 19, 1858 (12 Stat. 1031) Mdewakanton and Wahpaccota Sioux; June 19, 1858 (12 Stat. 1037) Sisseton and Wahpeton Sioux; April 15, 1859 (12 Stat. 1101) Winnebago; Oct. 1, 1859 (15 Stat. 467) Sauk and Foxes; May 30, 1860 (12 Stat. 1129) Delaware; Oct. 18, 1864 (14 Stat. 657) Chippewa of Saginaw, Swan Creek and Black River in Mich.

[12] Treaties of Nov. 15, 1861 (12 Stat. 1191) Potawatomi; June 24, 1862 (12 Stat. 1237) Ottawa; June 28, 1862 (13 Stat. 643) Kickapoo; Oct. 2, 1863 (13 Stat. 667) Red Lake and Pembina Chippewa; Mar. 6, 1865 (14 Stat. 667) Omaha.

[13] Treaties of July 16, 1859 (12 Stat. 1105) Swan Creek and Black River Chippewa; Oct. 5 1859 (12 Stat. 1111) Kansa; Feb. 18, 1861 (12 Stat. 1163 Arapahoe and Cheyenne; Oct. 14, 1864 (16 Stat. 707) Klamaths.

[14] Treaty of June 9, 1863 (14 Stat. 647) Nez Percés.

Eight treaties made in 1865[15] with as many bands of the Sioux tribe all contained a provision to the effect that should any individual or individuals desire to locate permanently upon any part of the lands claimed by the tribe, for the purpose of agricultural or other pursuits, the United States would protect such individuals against annoyance or molestation by either whites or Indians. The records of that period indicate that those Indians who were opposed to the influences that the whites were bringing into the Indian country often seriously interfered with the efforts of other Indians to adopt the life of the white man and actually cultivate the soil.[16]

A treaty of November 15, 1865 (14 Stat. 751) with the tribes of Middle Oregon provided in article 6 that the United States would allot to each head of a family a tract of land sufficient for his or her use, the possession of which should " be guaranteed and secured to the said family and the heirs thereof forever." Article five of a treaty of October 14, 1865 (14 Stat. 703) with the Cheyenne and Arapaho provided for the granting of lands to certain individuals, but there was no general allotment provision in this treaty.

A treaty of March 29, 1866 (14 Stat. 763) with the Potawatomi extended to all adults of the tribe, male and female, the provisions of article three of the treaty of November 15, 1861 (12 Stat. 1191) under which male heads of families, who were allottees, might upon request receive fee patents and their share of all tribal funds, and become citizens, with lands subjected to levy, taxation and sale. The preamble to the treaty of 1866 recited that this modification was being made at the request of the Potawatomi. Article three of the treaty of 1861 under which applications for fee patents could be granted to male adult Potawatomi by the President contained the following proviso:

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[15] Treaties of Oct. 10, 1865 (14 Stat. 695) Minneconjou; Oct. 14, 1865 (14 Stat. 699) Lower Brulé; Oct. 19, 1865 (14 Stat. 723) Two Kettle Band; Oct. 20, 1865 (14 Stat. 731) Sans Arcs; Oct. 20, 1865 (14 Stat. 739) Hunkpapa; Oct. 20, 1865 (14 Stat. 735) Yanktonai; Oct. 28, 1865 (14 Stat. 743) Upper Yanktonai; Oct. 28, 1865 (14 Stat. 747) Ogalala.

[16] See act June 14, 1862 (12 Stat. 427) providing protection for Indians who had been allotted in severalty in pursuance of a treaty and were desirous of adopting the habits of civilized life. Sec. 2 provided for trespass damages and Sec. 3 provided that chiefs offending should also be suspended from their offices.

> *Provided*, That, before making any such application to the President, they shall appear in open court in the district court of the United States for the district of Kansas, and make the same proof and take the same oath of allegiance as is provided by law for the naturalization of aliens, and shall also make proof to the satisfaction of said court that they are sufficiently intelligent and prudent to control their affairs and interests, that they have adopted the habits of civilized life, and have been able to support, for at least five years, themselves and families.

Whether such a degree of success had been achieved in the administration of the act of 1861 as to justify the extension of the privilege of receiving patents in fee to all adult Potawatomi seems very doubtful, in view of later experience with many tribes. The Indians were unquestionably desirous of freeing themselves from irksome restrictions regarding their property and their personal conduct and the representatives of the government evidently believed that the required proof of competency before a district court would safeguard the interests of the Indians. However experience has shown that many Indians who seem to be competent to manage their affairs soon lose their land when full control is given to them.

In a treaty of July 4, 1866 (14 Stat. 793) providing for the removal of the Delaware Indians from Kansas to Indian Territory in accordance with an act of Congress, allottees were authorized to elect whether they would dissolve relations with the tribe and become citizens of the United States, and provided that the lands of those who should so elect, with those of their minor children, held by them in severalty, should be reserved from the sale authorized by the treaty. Article nine of this treaty contained provisions under which such Indians might receive fee patents and become entitled to their pro rata shares of annuities.

A treaty of April 28, 1866 (14 Stat. 769) with the Choctaw and Chickasaw tribes provided in article 15 for the allotment of one hundred sixty acres to each individual, male and female; and one of July 19, 1866 (14 Stat. 799) authorizing the settlement of certain other tribes upon lands of the Cherokee Nation, provided that Cherokee Indians who desired to remain within the area thus set apart for other tribes, might each receive a patent to three hundred and twenty acres under article nineteen of the treaty. A treaty of February 18, 1867 (15 Stat. 495) arranging for the removal of the Sauk and Foxes to Indian Territory, authorized the issuance of fee patents to a large number of allotments made under a previous treaty.

A treaty of February 19, 1867 (15 Stat. 505) with the Sisseton and Wahpeton Sioux, authorized allotments of one hundred and sixty acres to each head of a family, or a single person over twenty-one years of age, but imposed the condition that an allotee must cultivate a portion of the allotment for five consecutive years and have fifty acres of the same, fenced, ploughed, and in crop before he should receive a patent. Allotment selections could not be sold except to the United States, but they would be inherited by the heirs of the allottees. This treaty indicates a belief that it was advisable to impose rather stronger restrictions upon allotees; yet a treaty of February 23, 1867 (15 Stat. 513) with the Seneca and several other tribes provided in section 15 for the removal of the restrictions upon alienation of allotments of incompetent Wyandot that were imposed by the treaty of 1855. One cannot escape the conviction that steps toward the removal of restrictions were frequently taken by inexperienced administrators who yielded to the importunities of the Indians who resented governmental control.

A treaty of March 19, 1867 (16 Stat. 719) with the Chippewa of the Mississippi, like that of February 19, 1867 with the Sisseton and Wahpeton Sioux, sought to encourage the Chippewa in agricultural pursuits by providing that, when an Indian should have ten acres under cultivation, he should have a certificate for forty acres, and additional certificates for forty acres each time that he should place an additional ten acres under cultivation, until a total of one hundred and sixty acres was covered by certificate. Such land was to be non-taxable and inalienable except to another Indian.

A treaty of October 21, 1867 (15 Stat. 581) with the Kiowa and Comanche Indians and one of October 28, 1867 (15 Stat. 593) with the Cheyenne and Arapaho, both provided in Section six as follows:

> Article 6. If any individual, belonging to said tribe of Indians, or legally incorporated with them, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation not exceeding three hundred and twenty acres in extent, which tract when so selected, certified, and recorded in the land-book as herein directed, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it. Any person over eighteen years of age, not being the head of a family, may in like manner select and cause to be certified to him, or her, for purposes of cultivation, a quantity of land not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

Treaties of April 29, 1868 (15 Stat. 635) with ten tribes of Dakota and Montana; May 7, 1868 (15 Stat. 649) with the Crows; May 10, 1868 (15 Stat. 655) with the northern Cheyenne and Arapaho; and July 3, 1868 (15 Stat. 673) with the Eastern Shoshoni and Bannock, all contained a section 6 identical with that of the Kiowa and Comanche treaty of 1867, showing conclusively the hope of those administering Indian Affairs that the Plains Indians could be induced to engage in agriculture and stock-raising as individuals and families, with the abandonment in a large degree of tribal relationships and the holding of lands in common. It is interesting to note that among the commissioners negotiating these treaties with the Plains Indians were a number of army officers, including General W. T. Sherman.

Article 7 of a treaty of March 2, 1868 (15 Stat. 619) with the Ute Indians was identical with article 6 of the Kiowa and Comanche treaty except that the head of the family was allowed only one hundred sixty acres instead of three hundred twenty acres; and a Navaho treaty of June 1, 1868 (15 Stat. 667) also provided that each head of a family might have one hundred sixty acres for farming purposes.

A treaty of August 13, 1868 (15 Stat. 693) with the Nez Percés provided for twenty acre agricultural allotments outside of the reservation, if there should not prove to be sufficient suitable land within the reservation. Evidently the negotiators of treaties with the tribes west of the Rocky Mountains expected that whatever livestock an Indian might have would be permitted to range at large on lands held in common or upon public lands.

Approximately seventy treaties between the United States and various Indian tribes have been cited in which specific authoritization was given for the allotment of land to any individual meeting certain general requirements, besides a large number of treaties providing for the granting of tracts in severalty to chiefs, mixed-bloods, inter-married whites and persons toward whom the Indians recognized an obligation. These treaties were made over a period of more than fifty years and the great majority of the treaties made subsequent to March 4, 1853 included, as a primary feature, the division of Indian land in severalty.

The years following the close of the War between the States, in 1865, witnessed a great expansion of settlements in the States west of the Mississippi and a filling in of the unsettled portions of Northern Michigan, Wisconsin and Minnesota as the line between agricultural use and the virgin forest was rapidly pushed back by the advancing tide of axmen and plowmen. Slowly, but none the less surely, the white race began to realize that the efforts to move Indians into western territories where they could remain indefinitely, separated from the close contact with the whites, and working out their own social and economical development was doomed to failure. The advent of the railroad had given a new impetus to nationalism and it became ever more apparent that distinct groups of self-governing and semi-independent peoples within the nation would be as incongruous and inadmissible from a federal standpoint as had been a similar condition within a State seemed unacceptable and intolerable to the citizens of Georgia when the Cherokees asserted their right to complete self-government.

While they were still domiciled in Georgia and other southern States many of the members of the Five Tribes had held negro slaves and this practice was continued in Indian Territory. It was quite natural that these slaveholders should sympathize with the southern people in the controversy over slavery and although many of the Indians felt that they had been unjustly removed from the South, the leaders still clung to southern institutions when the great division came in 1861. The signing of treaties with the Confederated States of America by representatives of these tribes and the adherence of a large proportion of the members of each tribe to the cause of the Confederacy, either actively of passively, exposed these tribes to the charge of disloyalty to the Federal Union and afforded an opportunity for a demand at the close of the war of a suitable chastisement. In 1863 the forces of the Federal Government achieved a decided ascendancy throughout Indian Territory and frightful reprisals were visited upon the Confederate sympathizers by the opposing members of the tribes.

On September 13, 1865 (Kappler's Laws and Treaties, p. 1050) an agreement was entered into between commissioners representing the President of the United States and representatives of the Creek, Cherokee, Choctaw, Chickasaw, Osage, Seminole, Seneca, Shawnee and Quapaw tribes. The preamble of this agreement contained a statement that these tribes, or portions thereof, had, through their treaties with the Confederate States, " made themselves liable to a forfeiture of all rights of every kind, character and description which had been promised and guaranteed to them by the United States." This agreement was never ratified by the United States Senate but the principle therin announced was maintained in subsequent negotiations.

On March 21, 1866 (14 Stat. 755), April 28, 1866 (14 Stat. 769), June 14, 1866 (14 Stat. 785) and June 19, 1866 (14 Stat. 799), treaties were entered into with the Seminole, Choctaw and Chickasaw, Creeks, and Cherokee, respectively, under which peace and a general amnesty were declared, slavery was abolished among the Indians, the civil rights of the negroes were guaranteed, a greater control by the United States than had previously existed over the affairs of the tribes was acknowledged, large cessions of land were made by each tribe and consent was given to the settlement of Indians of other civilized tribes within the areas retained by the Choctaw and Chickasaw and by the Cherokee. Some of the concessions made by the Indians in these treaties must be viewed as terms imposed by a victorious power upon a crushed and dependent opponent. By espousing the cause of the Confederacy, the Five Civilized Tribes had placed themselves in a position in which they could not successfully defend, on legal grounds, their exclusive claims to land that had been guaranteed to them by earlier treaties with the United States. The demand for agricultural lands for the rapidly expanding white settlements, the unsatisfactory relations between whites and Indians in Kansas and the widespread belief in the desirability of concentrating Indians within Indian Territory each contributed to the insistence that substantial cessions of land be made by the Indians holding immense tracts within the Territory.

The Indian outbreak in Minnesota in 1862-63, repeated depredations on property and life by the Apache and Navaho in the Southwest, the many outrages perpetrated in Central and Eastern Oregon from 1865 to 1867, and the increasing hostility of the Plains Indians as the decade drew to a close had resulted in a recurrence of sentiment in the West for a return of the administration of Indian Affairs to the War Department. Yet many believed that the methods used by the army were responsible for much of the irritation exhibited by the Indians and that no real progress toward the civilization of the Indians would be achieved through the application of military methods. A large part of Commissioner Taylor's annual report for 1868 was devoted to a detailed argument against the proposed return of Indian administration to the War Department. Taylor ended his dissertation by recommending " a Department exclusively for the management of Indian Affairs."

Possibly the extreme view of the opposite school of thought was represented by Lieutenant Colonel George L. Andrews, whose report printed as accompanying paper No. 35 with Commissioner Parker's report for 1870, discussed the depredations and murders committed by the Apaches of Arizona and contained the following: (p. 115)

> I am aware that the doctrine of force is deprecated by many theorists throughout our country; but to expect to accomplish results by any other means with a people, who, for generations, have known no other law, and in whom exists no spirit of magnanimity or appreciation of kindness, other than to consider it a weakness, is preposterous. Arguments to sustain this position might be multiplied indefinitely. Suffice it to say, I doubt if an instance can be found where actual contact with the Indians, for any length of time, has failed to produce this conviction in a candid and disinterested mind.

One group of those especially interested in Indian Affairs urged the selection of Indian agents by the representatives of religious societies engaged in missionary work among the Indians, and President Grant apparently was much impressed by their arguments. Another group believed that if the army were not to administer Indian Affairs, at least army officers should be chosen as agents. At one time nearly all Indian agents were either army officers or men of strong missionary convictions. However army officers who had been detailed to duty as Indian agents by President Grant in 1869 were relieved early in 1870 under the act of Jan. 21, 1870 (16 Stat. 62) forbidding the further employment of army officers in a civil capacity. This vacillation in policy must necessarily have had an unfavorable effect upon the Indians.

Those charged with administrative activities had long realized the incongruity of the Federal Government recognizing a distinct obligation to exercise supervision over the Indians and yet making treaties with them in much the same manner as with foreign powers. As noted above, the first report of the Board of Indian Commissioners recommended the abolishment of the treaty system. In his annual report for the same year, 1869, Commissioner E. S. Parker discussed the situation fully and said:

> It has become a matter of serious import whether the treaty system in use ought longer to be continued. In my judgment it should not.

Section 5 of the Indian appropriation act for the year ending June 30, 1870, as approved on April 10, 1869 (16 Stat. 13, 40) contained the words:

> That nothing in this act contained, or in any of the provisions thereof, shall be so construed as to ratify or approve any treaty made with any tribes, bands, or parties of Indians since the twentieth day of July eighteen hundred and sixty-seven.

This language presaged a determination to terminate the anomalous situation that had existed since the treaty was made between the United States of America and the Delaware Indians on September 17, 1778 (7 Stat. 13). It indicated that the custom of dealing with Indian tribes as if they were separate nations, which had long been recognized as an empty form, was soon to be abandoned. Two years later, at an obscure place near the end of the Indian appropriation act for the year ending June 30, 1872 (16 Stat. 544, 566) there was inserted a single clause which forbade the continuance of a practice that had been observed for nearly a century in dealing with the Indians. In 1874, after he had resigned the office of Commissioner of Indian Affairs, General Francis A. Walker of Massachusetts published a book in which he wrote:[17]

> In 1871, however, the insolence of conscious strength, and the growing jealousy of the House of Representatives towards the prerogative—arrogated by the Senate—of determining, in connection with the executive, all questions of Indian right and title, and of committing the United States incidentally to pecuniary obligations limited only by its own discretion, for which the House should be bound to make provision without inquiry, led to the adoption, after several severe parliamentary struggles, of the declaration that 'hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power, with whom the United States may contract by treaty.

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[17] Francis A. Walker, *The Indian Question* (Boston, James R. Osgood & Co.), p. 11.

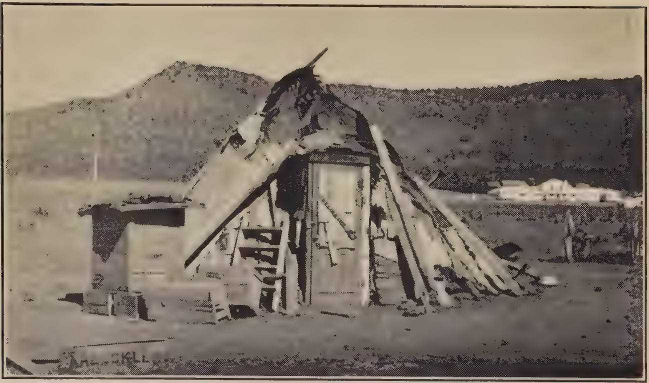
The act to which General Walker referred was that of March 3, 1871 (16 Stat. 566) which definitely announced the close of the period of treaty-making with Indian tribes within the United States. Great disappointments and many embarrassments in the administration of Indian Affairs and a flood of criticism in the public press as to the alleged failure of the policies that had been pursued by the Federal Government had over long years contributed to the creation of a state of public opinion favorable to such legislative action; but the above statement as to the desire of the House of Representatives to have a greater share in the management of Indian Affairs is entitled to careful consideration. Nine months after the above act was approved and went into effect, Francis A. Walker became Commissioner of Indian Affairs. Walker was on the scene, an active participant in the events of the time, and in a position to know undercurrents of thought and purpose that may be very inadequately revealed in the statute itself. The desire of the more popular branch of the federal legislature for a larger share in responsibility may have played a much greater part in the enactment of this legislation than most students of Indian policies have been accustomed to think. Pronounced differences in view point between the House and the Senate, and more especially between the Committees on Indian Affairs, in the respective houses of Congress, have existed at other times; and not infrequently certain phases of Indian legislation have been due largely to the more or less obstinate determination of one group to effect legislation in which it was interested.

Walker declared that the act of 1871 destroyed at a single blow the hereditary authority of the chiefs but provided no substitute, either in the form of self-government by the Indians or in the form of increased authority on the part of the Indian agent.

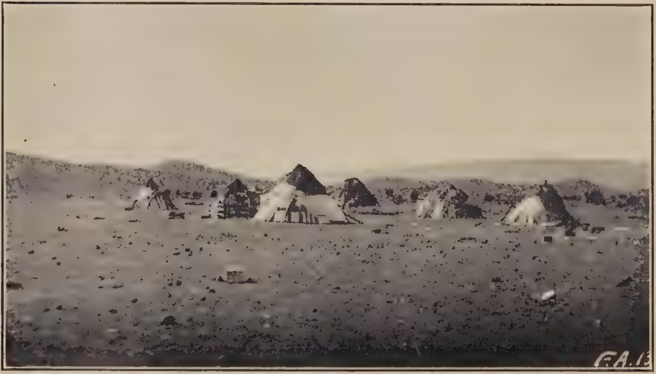
The Supreme Court of the United States had definitely decided in March 1831 in the case of Cherokee Nation vs. Georgia (5 Peters 1) that, though the Indian tribes within the United States constituted distinct political entities with rights peculiar to themselves, such tribes were not sovereign nations. However, forty years passed before the Congress enacted legislation to abolish the practice of making treaties with local groups within the nation as if they had the legal status of sovereign foreign powers. It must be remembered that the Constitution, which became effective on March 4, 1789, contained no words which could be held to specifically direct or authorize the making of treaties with Indian tribes occupying lands within the area subject to the jurisdiction of the United States. Whatever authority there was for such agreements must be found in Section 2 of Article II which authorized the President, by and with the advice of the Senate, to make treaties. Unquestionably this clause contemplated agreements with foreign powers and it clearly appears from contemporary official documents that those who formulated the Constitution would not have conceded that Indian tribes occupying lands within the area over which the Federal Union was to exercise control were foreign nations with sovereign rights. The treaty practice was apparently merely a survival of a custom that had been adopted in colonial times as the most convenient method of insuring harmonious relations with the natives.

The failure of the Congress, for a period of more than eighty years after the adoption of the Constitution and for forty years after the epochal decison in Cherokee Nation vs. Georgia, to provide a more appropriate method of regulating the relations of Indian Tribes to the Federal Government, like the failure during more than a century and a half to define the term " Indian," affords a striking illustration of the indefinite and hap-hazard manner in which Indian Affairs have been conducted. Obviously the exact legal relationship of Indian tribes to the Federal Government should have been determined at one of the earliest sessions of Congress and just as obviously, with hundreds of laws being enacted and hundreds of millions of dollars being appropriated for the benefit of a special class of inhabitants, a definition of the individuals who should form such a class should have been established by Congressional authority long before the year 1934.

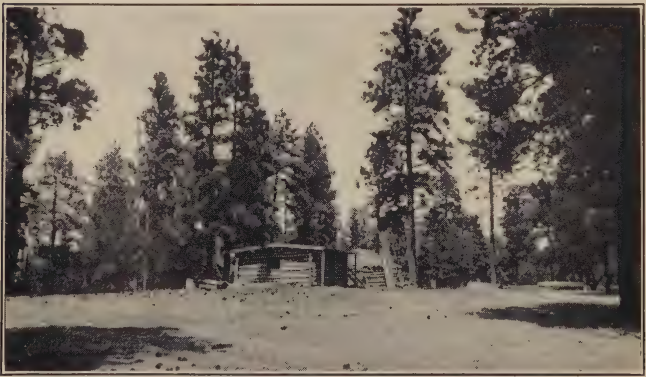
INDIAN HOMES IN SOUTHWEST IN 1928.



At Whiteriver, Arizona, with the door securely padlocked.



At Cibecue on the Fort Apache Reservation.



Old and new hogan of family on Fort Defiance Plateau
Southern Navaho Jurisdiction.

CHAPTER V

THE ACCEPTANCE OF A GENERAL ALLOTMENT POLICY
1872-1887

On December 11, 1871 the Senate confirmed the nomination of Francis A. Walker as Commissioner of Indian Affairs. Walker, a native of Massachusetts, graduated at Amherst College in 1860 and entered the military service of the United States early in 1861. His record in the Union Army was honorable and distinguished. After the close of the war he was placed in charge of the bureau of statistics of the Federal Government and had charge of the census of 1870. The fact that he became Professor of Political Economy and History in the Sheffield Scientific School at Yale University in 1873 and remained there until 1881 when he became President of the Massachusetts Institute of Technology may be accepted as indicating that he was not lacking in intellectual and administrative qualities.

When General Walker assumed the office of Commissioner of Indian Affairs federal Indian administration was being subjected to a storm of criticism. In his first and only annual report, dated November 1, 1872, Walker presented a vigorous defense of the course that was being pursued by the administration in placating the hostile tribes by methods that were being denounced as inconsistent, ineffective and humiliating to the nation. Extensive quotations from Commissioner Walker's report will assist the reader to an understanding of the conditions confronting the nation in 1872 with respect to Indian Affairs. In this report General Walker wrote: (p. 3)

> The Indian policy, so called, of the Government, is a policy and it is not a policy, or rather it consists of two policies entirely distinct, seeming, indeed, to be mutually inconsistent and to reflect each upon the other; the one regulating the treatment of the tribes which are partially hostile, that is, whose hostility is repressed just as long as, and so far as, they are supported in idleness by the Government; the other regulating the treatment of those tribes which, from traditional friendship, from numerical weakness, or by the

force of their location, are either indisposed toward, or incapable of, resistance to the demands of the Government. * * * This want of completeness and consistency in the treatment of the Indian tribes by the Government has been made the occasion of much ridicule and partisan abuse; and it is calculated to provoke criticism and to afford scope for satire; but it is none the less compatible with the highest expediency of the situation. It is, of course, hopelessly illogical that the expenditures of the Government should be proportioned not to the good but to the ill desert of the several tribes; that large bodies of Indians should be supported in entire indolence by the bounty of the Government simply because they are audacious and insolent, while well-disposed Indians are only assisted to self-maintenance, since it is known they will not fight. It is hardly less absurd, on the first view of it, that delegations from tribes that have frequently defied our authority and fought our troops, and have never yielded more than a partial and grudging obedience to the most reasonable requirements of the Government, should be entertained at the national capital, feasted and loaded with presents. * * * And yet, for all this, the Government is right and its critics wrong; and the 'Indian Policy' is sound, sensible and beneficent, because it reduces to a minimum the loss of life and property upon our frontier, and allows the freest development of our settlements and railways possible under the circumstances.

The mistake of those who oppose the present Indian policy is not in erroneously applying to the course of the Government the standard they have taken, but in taking an altogether false standard for the purpose. It is not a whit more unreasonable that the Government should do much for hostile Indians and little for friendly Indians than it is that a private citizen should, to save his life, surrender all the contents of his purse to a highwayman; while, on another occasion, to a distressed and deserving applicant for charity, he would measure his contribution by his means and disposition at the time. * * *

It is not, of course, to be understood that the Government of the United States is at the mercy of the Indians; but thousands of its citizens are, even thousands of families. Their exposed situation on the extreme verge of settlement affords a sufficient justification to the Government for buying off the hostility of the savages, excited and exasperated as they are, and most naturally so, by the invasion of their hunting grounds and the threatened extinction of game. * * *

Especially has the absence of Indian hostilities been of the highest value, within the last few years, in directing and determining to the extreme frontier the immigrants arriving in such vast numbers on our shores.

> There is no question of national dignity, be it remembered, involved in the treatment of savages by a civilized power. With wild men, as with wild beasts, the question whether in a given condition, one shall fight, coax, or run, is a question merely of what is easiest and safest.

Walker referred to fifty western valleys, rapidly filling up with settlers, miners and others that would be laid waste, "either by abandonment or massacre," if there were general Indian hostilities; but he also stated that the occasional use of the military arm of the Government was not inconsistent with the so-called "Peace Policy." It was not to be expected, he said, that all Indians would at once respond to the proposed policy and he continued:

> In the first announcement of the reservation system, it was expressly declared that the Indians should be made as comfortable on, and uncomfortable off, their reservations as it was within the power of the Government to make them; that such of them as went right should be protected and fed, and such as went wrong should be harassed and scourged without intermission.

Some seemed to think, said Walker, that trouble with a few Indians was as bad as having all the Indians on our hands at once, and others that the slightest use of the military in repressing depredations was in effect making war. He spoke of the criticism of military operations of the preceding three months, admitted that the government had been tardy in carrying out the policy of applying the scourge to Indians who had left reservations for hostile purposes and referred to the rather general sentiment that forbearance was due the Indians because of past wrongs against them. He cited the fact that communities that had suffered had complained bitterly and remarked:

> But it is the duty of the Government to act in the premises with a somewhat broader view and more philosophical temper than is to be expected of those who are actually smarting in their families and their property from the scourge of Indian depredations. * * *
>
> The patience and forbearance exercised have been fully justified in their fruits. The main body of the roving Indians have, with good grace or with ill grace, submitted to the reservation system.
>
> * * *

> There is a residue whose disposition and behavior give little encouragement to further forbearance. The numbers of the actually hostile and depredating bands of to-day probably do not exceed in the aggregate eight thousand.

Walker thought a temporizing policy justifiable on the ground that within three years the Northern Pacific and Union Pacific railroads would be completed, thus making it possible for the Government to rush troops quickly to any locality in which there was an uprising and promptly end the same. He was not so hopeful as to the Southwest but expressed the view that the Indians must yield or perish. He said: (p. 9)

> Just as soon as these tribes cease to be formidable, they should be brought distinctly to the realization of the law that if they would eat they must also work. Nor should it be left to their own choice how miserably they will live, in order that they may escape work as much as possible. The Government should extend over them a rigid reformatory discipline, to save them from falling hopelessly into the condition of pauperism and petty crime. * * *
>
> Unused to manual labor, and physically disqualified for it by the habits of the chase, unprovided with tools and implements, without forethought and without self-control, singularly susceptible to evil influences, with strong animal appetites and no intellectual tastes or aspirations to hold these appetites in check, it would be to assume more than would be taken for granted of any white race under the same conditions, to expect that the wild Indians will become industrious and frugal except through a severe course of industrial instruction and exercise, under restraint.

In discussing the large group of Indians classified as the Sioux whose activities during the preceding decade has caused the Government much concern, Walker said: (p. 45)

> With the exception of the main portion of the Ogalala band, at the Red Cloud Agency, and a considerable body of disaffected Indians from all the bands, known as the 'hostile Sioux,' of whom Sitting Bull and Black Moon are the principal chiefs, these bands are all within the limits of the reservation set apart by said treaty of 1868. A few at each of the agencies on the Missouri River have shown a disposition to engage in agriculture, but by far the greater part of them remain 'breech-clout' Indians, disinclined to labor for a living and accepting subsistence from the Government as the natural and proper consideration for the favor done the Gov-

ernment by their consenting to remain at the agencies assigned them. * * *

If they have any suspicion that this thing cannot last forever, and that the time will soon come for them to work or starve, the great majority do not allow themselves to be influenced by it, but seem determined to put the evil day as far off as possible. The present cost of supporting these 25,000 Indians does not fall much short of $1,500,000 per annum, an expenditure the continuance of which beyond the treaty provisions to that effect (expiring in 1874) could only be justified by such considerations as were urged in the first pages of this report.

From the fact that Commissioner Walker did not discuss the subject of the allotment of lands in severalty the conclusion may possibly be fairly drawn that he did not accept the view that this afforded one of the principal means of solving the difficulties of Indian administration. His opposition to citizenship as expressed in the report indicated that he did not favor the allotment plan. Obviously he did not believe that the Indians were generally ready for assimilation. However, even in Walker's report the assimilation theory was presented. At that time the law required the printing of the reports of Indian superintendents and agents and these were included in the annual reports of the Commissioner as accompanying documents. In Paper No. 3, accompanying Walker's report, was a glowing statement by Agent William T. Richardson of the Green Bay Agency as to the great advantage that the Stockbridge Indians had derived from close contact with the whites. He said more than half of the members of the tribe had decided to take their shares of the tribal property and become citizens of the United States. In accompanying Paper No. 64 R. H. Milroy, Superintendent of Indian Affairs for Washington Territory, stated that the Puyallup, Nisqually and Squaxon chiefs had expressed the strong desire of their people for a division of their lands in severalty in order that they might build houses, establish farms and improvements and "live like white men." They represented that neighboring white men had told them they might lose their reservations if they did not obtain individual holdings, which caused much uneasiness and discouraged them from working and making permanent improvements.

That Commissioner Walker believed in segregation of the Indians is clearly shown by the quotations above from his report for 1872. Two years after his retirement from the office of Commissioner, as a private citizen, Walker undertook to contribute further to the solution of "The Indian Question" and in a book bearing that title he said:[1]

> First. The reservation system should be made the general and permanent policy of the government. By this is meant something more than that the Indians should not be robbed of their lands in defiance of treaty stipulations, or that the Indian title should be respected, and the Indians maintained in possession until they can be made ready to cede their lands to the government or to sell them, with the consent of the government, to the whites. The proposition is that the United States, as the only power competent to receive such lands by cession, or to authorize their sale, should formally establish the principle of separation and seclusion, without reference to the wishes either of the Indians or of the encroaching whites; should designate by law an ample and suitable reservation for each tribe and band not entitled by treaty; and should, in any reductions thereafter requiring to be made, provide that such reductions shall be made by cutting off distinct portions from the outside, and not in such a way as to allow veins of white settlement to be injected, no matter whether along a stream or along a railway.
>
> This principle of excluding Indians from whites for the good of both races is established by an overwhelming preponderance of authority. There are no mysterious reasons why this policy should not be adopted; the considerations which favor it are plain and incontestible. The first is the familiar one, that the Indian is unfortunately disposed to submit himself to the lower and baser elements of civilized society, and to acquire the vices and not the virtues of the whites (p. 62).

In this book Walker advocated the establishment of one or two grand reservations west of the Mississippi for the Indians so that the remainder of the United States might be opened to settlement. He pointed out that Indian Territory comprised over 70,000 square miles of the best agricultural land west of the Mississippi River and that, after the barren plains and the flint hills and sand hills were excluded, there were left 30,000,000 acres of productive agricultural land in this Territory, which would afford 125 acres to each of the 250,000 Indians who might be settled there. Walker seems to have felt that there was no probability that the government could prevent the encroachment of whites if the Indians were left upon scattered reservations throughout the western States. As a student of economics, immigration and national development, he seems to have over-estimated the need of the whites for land and to have under-estimated the needs of the Indians and the difficulties that would attend efforts at concentration.

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[1] Francis A. Walker, *The Indian Question* (Boston, James R. Osgood and Co., 1874).

In discussing the future course to be pursued by the United States government, Walker said: (p. 118)

> Whenever Congress shall take up in earnest this question of the disposition to be made of the Indian tribes, its choice will clearly be between two antagonistic schemes,—seclusion and citizenship. Either the government must place the Indian upon narrower reservations, proportioned to their requirements for subsistence by agriculture, and no longer by the chase,—reservations which shall be located with the view of avoiding as much as possible the contact of the races, and working as little hindrance as may be to the otherwise free development of the population; and around these put up the barriers of forty years ago, re-enforced as the changed circumstances require; or the government must prepare to receive the Indians into the body of the people, freely accepting, for them and for the general community, all the dangers and inconveniences of personal contact and legal equality. No middle ground is tenable. If substantial seclusion is not to be maintained, at any cost, by the sequestration of tribes and by the rigid prohibition of intercourse, it is worse than useless to keep up the forms of reservations and non-intercourse. Many of the tribes are already as fully subject to all the debasing influences of contact with the whites as they could be if disbursed among the body of citizens; while yet they are without any of the advantages popularly attributed to citizenship.

General Walker then commented upon the powerful business, social and political interests that would oppose a re-adjustment of the Indian tribes between the Missouri and Pacific under the policy of seclusion and non-intercourse and continued: (p. 120)

In addition to the political, industrial and speculative interests which will thus oppose the restoration of the policy of Indian seclusion from the shattered condition to which the events just recited have reduced it, three classes of persons may be counted on to lend their support to the plan of introducing the Indians, who have thus far been treated as 'the wards of the nation,' directly into the body of our citizenship. We have, first, those who have become impatient of the demands made upon the time of Congress and the attention of the people in the name of the Indians, and who wish, once for all, to have done with them. Such impatience is neither unnatural nor wholly unreasonable. It must be confessed that no good work ever made heavier drafts upon the faith and patience of the philanthropic. What with the triviality of the Indian character, the absurd punctilio with which, in his lowest estate, he insists on embarrassing the most ordinary business, and his devotion to sentiments utterly repugnant to our social and industrial genius; what, again, with the endless variety of tribal relations and tribal claims, and the complexity of tribal interests, aggravated by jealousy and suspicion where no previous intercourse has existed, and by feuds and traditions of hatred where intercourse has existed,—the conduct of Indian affairs, whether in legislation or in administration, is in no small degree perplexing and irritating. The Indian treaties prior to 1842 make up one entire volume of the General Statutes, while the treaties and Indian laws since that date would fill two volumes of equal size. It cannot be denied that this is taking a good deal of trouble for a very small and not very useful portion of the population of the country: and it is not to be wondered at that many citizens, and not a few Congressmen, are much disposed to cut the knot instead of untying it, and summarily dismiss the Indian as the subject of peculiar consideration, by enfranchising him, not for any good it may do to him, but for the relief of our legislation.

Next, we have that large and increasing class of Americans, who, either from natural bias, or from the severe political shocks of the last twelve years, have accepted what we may call the politics of despair, by which is meant, not so much a belief in any definite ill fortune for the Republic, as a conviction that the United States are being borne on to an end not seen, by a current which it is impossible to resist; that it is futile longer to seek to interpose restraints upon the rate of this progress, or to change its direction; * * * Many of the persons now holding these views were formerly among the most conservative of our people; but emancipation, negro suffrage, and the consolidation of power consequent upon the war, have wholly unsettled their convictions, leaving them either hopeless of the Republic, or, as temperament serves, eager to crowd on sail and prove at once the worst and the best of fortune. * * * Men of this class (and they are not a few) are not likely to hesitate in extending to the Indians citizenship and the ballot. A little more or less, they think, can make no difference. After negro suffrage, any thing.

Finally, we have a class of persons, who, from no impatience of the subject, and from no indifference to the welfare of the aborigines, will oppose the policy of seclusion, as an anomaly not to be tolerated in our form of government. These are men who cannot bear, that, from any assumed necessity or for any supposed advantage, exception should be made of any class of inhabitants, or in respect to any portion of territory, to the rule of uniform rights and responsibilities, and of absolute freedom of movement, contract, and intercourse, the whole nation and the whole land over. Were the Indians ten times as numerous, were their claims to consideration stronger by no matter how much, and were the importance to them of seclusion far more clear than it appears, these political philosophers would steadily oppose the scheme. They might regret the mischiefs which would result to the Indian from exposure to corrupting influences; they might be disposed to favor the most liberal allowances from the public treasury, in compensation to him for his lands, and for his industrial endowment; but they would none the less relentlessly insist that the red man should take his equal chance with white and black, with all the privileges and all the responsibilities of political manhood.

At the close of General Walker's administration of scarcely more than one year, Edward P. Smith of New York became Commissioner of Indian Affairs on March 17, 1873. In his annual report of November 1, 1873, Commissioner Smith discused at some length six hindrances to Indian progress. Since these observations, like those of his predecessor, indicate the drift of thought during a period when Indian Affairs were receiving unusually earnest consideration by the general public, his remarks under all six headings will be given in an abbreviated form. The essential statements in his presentation were as follows: (p. 3)

First, " The Fiction in Indian Relationships."

We have in theory over 65 independent nations within our

> border, with whom we have entered into treaty relations as being sovereign peoples; and at the same time the white agent is sent to supervise these foreign powers, and care for them as wards of the Government. * * * So far, and as rapidly as possible, all recognition of Indians in any other relation than strictly as subjects of the Government should cease. To provide for this, radical legislation will be required.

Second, "Annuities."

> In treaties heretofore made with many tribes, large sums are stipulated to be paid in cash annuities. Facts show that ordinarily the Indians who have received the most money in this form are in the most unfavorable condition for civilization. The bounty of the Government has pauperized them, and in some cases has tended to brutalize more than to civilize.

Third, "Want of Individual Property."

> When everything is held in common, thrift and enterprise have no stimulus of reward, and thus individual progress is rendered very improbable, if not impossible. The starting point of individualism for an Indian is the personal possession of his portion of the reservation.

Fourth, "Law Among Indians."

> The first condition of civilization is protection of life and property through the administration of law.

Fifth, "Refusal of Indians to Remain on Reservations."

> Smith stated that this was experienced chiefly with the Sioux, Arapahoes, Kiowas and Comanches; that part of the Arapahoes and Cheyennes were identified with the Sioux and the remainder were living on a reservation in Indian Territory; that part of the Sioux, who had attacked a Northern Pacific Railroad surveying party, had received slight punishment and had since been impudent and hostile; and that the military had refrained from entering their reservation because of the treaty. He believed it would be necessary for the military to act.

Sixth, "Inter-tribal Warfare."

> Like many previous commissioners, Smith referred to the repeated attacks of the different tribes of Indians upon one another; said the Sioux had been forbidden to leave their reservation for hunting, because of the massacre of Pawnees at the last buffalo hunt; and referred to the massacre of the Hall family by the Sioux. In this connection reference may be made to a report of Superintendent Richardson of Green Bay Agency in

the 1872 report (p. 208) as to the murder of the Cook family at Oak Lake by Chippewas.

Smith urged that the Secretary be given discretion to expend cash for the benefit of Indians instead of distributing it as annuities and cited the experience of the government with the Sisseton and Wahpeton Sioux as successful in thus furnishing the means for agricultural activities. Under the heading of "Law Among Indians" Smith referred to the destruction of the authority of the chiefs and the substitution of nothing therefor, as mentioned in the reports of his predecessors. He suggested either the definition of crimes by United States law and punishment by United States courts or the giving of magisterial powers to agents under a system in which a jury of Indians or others residing at agencies should have authority to determine the punishment for offenses. Smith believed that the States in which Indians lived should assume at least a part of the responsibility for the adjustment of Indians to their environment and even before he became Commissioner had, in a letter printed in Commissioner Walker's report for 1872 (p. 211), suggested that the State of Minnesota could better assume the cost of improving the condition of Indians within her borders than to allow these 6,000 inhabitants to live as savages.

In his annual report for 1874 Commissioner Smith recommended six legislative measures, but no action was taken by Congress, and in his report for 1875 these six legislative recommendations were repeated. They were as follows: (p. 16)

(1) Criminal laws of the United States to apply to all reservations and all offenses, including those of Indians against Indians and an extension of the jurisdiction of the United States courts to enforce the same.

(2) The declaration by Congress that Indians are amenable to the police-laws of States and Territories for any act committed outside of a reservation.

(3) The conferring upon the President of authority to extend jurisdiction of State courts, or any portion of them, to any reservation whenever, in his judgment, any tribe is prepared for such control.

(4) The providing of a sufficient force of deputy marshalls to enforce law and order both among and in behalf of Indians.

(5) The giving of authority to the Secretary of the Interior to prescribe for all tribes prepared, in his judgment, to adopt the same, an elective government, through which shall be administered all necessary police regulations of the reservations.

(6) The providing of a distinct territorial government or United States court, whenever Indians are present in sufficient numbers to justify it.

On the following page of his report Commissioner Smith boldly asserted the doctrine, which he had guardly suggested in 1872, that the administration of Indian Affairs should be made a responsibility of the respective States in which the Indians resided as soon as the States and the Indians were prepared for such action. He declared: (p. 17)

> There can be no question that the interests of all parties concerned would be benefitted by a transfer of the care of the Indians upon the seven reservations in New York to the authorities of that State, either directly, or by declaring said State the guardian or agent of the United States in their behalf. * * * What is true of New York is also true of Michigan, although not to so marked a degree. * * * The same is true of the Chippewas, Menominees, Oneidas and Stockbridges in Wisconsin. * * * The property of these Indians in annuities and lands, and the timber standing on their reservations is ample to create a fund which will secure the State against any burden of taxation in their future care and control; and it would seem fit that the State having them in charge, and obliged ultimately to bear whatever disability may arise from their presence, is entitled now to take charge of their property, and so to manage it as to provide for the largest benefit to the Indians within her borders. What is true of Indians in Wisconsin and their property, may be said with some qualifications of the Chippewa in Minnesota. I recommend that legislation be sought from Congress looking toward the divorcement of the United States and Indians as ' citizens of a domestic sovereignty within our borders ' and the transfer of the Indians and their property to the States where they reside, as rapidly as both the States and the Indians are prepared therefor.

The question of the transfer of the Indian Bureau back into the War Department was still being agitated and Smith devoted some space to this subject in his report for 1875, quoting from the Commissioner's report for 1868 and from the report of the "Peace Commission." He opposed the proposed transfer, but suggested that arrangements be made for the purchase of supplies for the Indian Service, amounting to approximately $2,000,000 annually, by the War Department, which had ample facilities for such purchasing, if the Indian Service could not be given an adequate force for the accomplishment of the purchases.

The Indians had continued to complain about the clothing and subsistence supplies received and about the delay in their receipt (due frequently, as reports show, to the belated appropriations made for the purchases and as often probably to cumbersome methods and inadequate employees in the Indian Service). The public continued to complain about the exorbitant cost of feeding and clothing Indians who, as they believed, were able to provide in large part for their own needs. In his report for 1875, Commissioner Smith said: (p. 24)

> Congress at its last session, recognizing the propriety that Indians, like other people, should toil for what they have, directed that all annuities should hereafter be paid only in return for some form of labor, giving, however, to the Secretary of the Interior discretion which allows the exemption of certain tribes from the operation of the restrictions.

Smith recommended the continuation of this restriction and a reduction of the discretion of the Department to the minimum. Evidently difficulty was experienced in exercising the discretion.

On December 8, 1875, the Senate confirmed the nomination of John Q. Smith of Ohio as Commissioner of Indian Affairs. In his report for the year ending June 30, 1876, another Smith discussed the difficulties that were inherent in the administration of Indian Affairs and the circumstances that confronted the Indians themselves. He said: (p. vi)

> The next twenty-five years are to determine the fate of the race. If they cannot be taught, and taught very soon, to accept the necessities of their situation and begin in earnest to provide for their

own wants by labor in civilized pursuits, they are destined to speedy extinction.

After describing the progress that some individuals and tribes had made, Smith continued: (p. vii)

> It is not my wish to give any rose-colored view of the present condition of our Indians. Many of them are as miserable and degraded as men can be; but it cannot be denied that others are making reasonably satisfactory progress.

Commissioner Smith recommended the adoption of three principles of policy: (p. vii)

> First, the concentration of all Indians on a few reservations.
>
> Second, the allotment to them of lands in severalty.
>
> Third, the extension over them of the United States laws and the jurisdiction of the United States courts.

He recommended concentration of the Indians in the Indian Territory, on the White Earth reservation in northern Minnesota and on a reservation in the southern part of Washington, probably the Yakima, and, if the Indians of Colorado, Utah, New Mexico and Arizona could not be taken to Indian Territory, then their concentration in Colorado or Arizona. He believed that all of the Indians in Kansas, Nebraska, Dakota, and at least a part of those in Wyoming and Montana could be induced to remove to Indian Territory and that there was ground to believe that the Colorado, Arizona and New Mexico Indians and perhaps all of those in Nevada could be taken to Indian Territory.

Smith said: (p. viii)

> Many of these Indians are now located on lands utterly unfit for cultivation, where starvation and perpetual support by the Government are the only alternatives. It is doubtful whether even white people could cultivate profitably the greater part of the Sioux reservation in Dakota. In the Indian Territory, on the other hand, are fertile lands, a genial climate, and room for more Indians than there are in the whole Union.
>
> That the Indian sentiment is opposed to such removal is true.

Referring to the circumstances connected with the removal of the Five Tribes from the southern States to Indian Territory, Smith said:

> With a fair degree of persistence the removal thither of the other Indians can also be secured. * * * It is to be regretted that all the Indians in the United States cannot be removed to the Indian Territory; but it is doubtful whether, at least for many years, it will be best to attempt to remove Indians thither from the region of the Great Lakes or from the Pacific Coast.

It was because of the difficulty of removing Indians that Smith suggested "the 36 townships of well-watered timber and wheat lands" at White Earth for the Indians of Minnesota and Wisconsin and possibly others. He suggested Yakima for the Northwest Indians because of the success agent Wilbur had achieved there, in spurring the Indians to industrial activity.

Probably Commissioner J. Q. Smith had no very definite convictions regarding the subject of allotment of lands in severalty to Indians before assuming the office of Commissioner of Indian Affairs. However, so thoroughly fixed had this idea become in the Indian Service and in the thinking of a large part of the public that within less than a year after he became Commissioner, Smith had become an ardent convert to the cause and in his annual report for 1876 he declared: (p. ix)

> It is doubtful whether any high degree of civilization is possible without individual ownership of land.* * * No general law exists which provides that Indians shall select allotments in severalty, and it seems to me a matter of great moment that provision should be made not only for permitting, but requiring, the head of each Indian family, to accept the allotment of a reasonable amount of land, to be the property of himself and his lawful heirs, in lieu of any interest in any common tribal possession. Such allotments should be inalienable for at least twenty, perhaps fifty years, and if situated in a permanent Indian reservation, should be transferable only among Indians.

Smith explained that powerful influences among the Indians would oppose this plan because of self-interest. He discussed the subject of "Law for Indians" and referred to statements of his predecessors as to 275,000 people in the midst of the American people with no adequate law for protection of the innocent or for the punishment of offenders. Among other things he said: (p. ix)

> Civilization among white men could not long exist without the guarantees which law alone affords; yet our Indians are remitted by a great civilized government to the control, if control it can be called, of the rude regulations of petty igorant tribes. * * * Failure of our efforts are due more to failure to make Indians amenable to *our* laws than to any, or all other causes combined. * * * I believe it the duty of Congress at once to extend over Indian reservations the jurisdiction of the United States courts, and to declare that each Indian in the United States shall occupy the same relation to law that a white man does. An Indian should be given to understand that no ancient custom, no tribal regulations, will shield him from just punishment for crime; and also that he will be effectually protected, by the authority and power of the Government, in his life, liberty, property, and character, as certainly as if he were a white man. There can be no doubt of the power of Congress to do this, and surely the intelligent Committees on Indian Affairs of the Senate and House can readily propose legislation which will accomplish this most desirable result. I make this suggestion as by far the most important which I have to make in this report.

Smith spoke of the Negro problem and its settlement and said:

> It is time that some solution of this whole Indian problem, decisive, satisfactory, just, and final, should be found. In the three propositions above stated will, I believe, be found the true and final settlement of this perplexing subject. However, efficient may be the administration of the Indian Office, and however faithful the labors of its agents and their subordinates, I have little hope of any marked degree of success until the above suggestions are substantially adopted as a permanent Indian policy.

As noted above Commissioner Edward P. Smith in his report for the fiscal year ending June 30, 1875 strongly recommended the transfer of the care of certain Indians to the States in which they lived. Edward P. Smith resigned and John Q. Smith succeeded him in the office of Commissioner of Indian Affairs before any legislative action along this line could be considered by Congress. However, it appears that the principles embodied in a bill introduced in Congress at the session beginning in December 1875 were formulated while Smith of New York was occupying the office of Commissioner. This bill, which on February 1, 1876, was referred to the Committees on Indian Affairs, is extremely interesting as an anticipation of certain proposals advanced a half century later as novel plans for the solution of the Indian problem. This proposal is of sufficient interest from an historical standpoint to justify the quotation of the letter from the Secretary of the Interior submitting the same to Congress and the bill in full. These are as follows:[2]

DEPARTMENT OF THE INTERIOR,
Washington, January 27, 1876.

Sir: I have the honor to transmit herewith a draught of a bill for the transfer of the Indians in the States of New York, North Carolina, Michigan, Wisconsin, Minnesota, and Iowa from the control of the United States Government to the control of the several States named within which said Indians are located.

In my opinion the Indians referred to have made such progress in the acquirement of education and industrial skill as to enable them to support themselves, and to render it wise and proper to separate them from the guardianship and control of the Federal Government, that they may be made subject to the restraints and be endowed with the rights and privileges granted by State laws and regulations.

This subject was referred to in my annual report, and also in the last annual report of the Commissioner of Indian Affairs, and, regarding it a progressive movement in the direction of a final settlement of the relations of the Indians to the Government, I respectfully commend the measure to the favorable consideration of Congress.

I have the honor to be, very respectfully, your obedient servant,

Z. CHANDLER,
Secretary.

The Speaker House of Representatives.

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[2] House of Rep. Exec. Doc. No. 106, 44th Cong., 1st. Sess. Misc. Doc. Ind. Of. Lib., I, p. 168.

Bill

Whereas the following-named tribes and bands of Indians, to wit: the Six Nations, including the Oneidas, the Onondagas, the Tuscaroras, the Tonawandas, and the Senecas, of the State of New York; the Eastern Band of Cherokees, in the State of North Carolina; the Chippewas, the Ottawas, and the Pottawatomies, of the State of Michigan; the Chippewas, the Menomonees, the Oneidas, and the Stockbridges, of the State of Wisconsin; the Sacs and Foxes, of the State of Iowa; and the Chippewas, of the State of Minnesota, have attained to such a degree of civilization as to become self-supporting, and in all other respects fitted to mingle with the citizens of the States, to be subject to the same municipal control, and enjoy the same rights and privileges; and whereas it is not the policy of the United States Government to maintain its present system of guardianship over the Indians resident within its jurisdiction after they have become fitted to enjoy the privileges and exercises the duties of citizenship: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That by and with the consent of the States of New York, North Carolina, Michigan, Wisconsin, Iowa, and Minnesota, or either of them, first had and obtained, respectively, through the legislative assemblies of the said States, and upon the terms and conditions hereinafter specified, the control and guardianship of the several tribes and bands of Indians mentioned in the preamble to this act shall be transferred to the said States respectively, within which they are located, to be by them exercised according to the laws of the said States.

SEC. 2. That all stocks, bonds, or other evidences of indebtedness, held in trust by the Government of the United States, or any officer thereof, for the benefit of any tribe or band of Indians named in the preamble to this act, the principal of which is the property of said Indians, and all balances of appropriations which may remain unexpended in the Treasury of the United States to the credit of said Indians, shall be transferred to the said State so accepting the guardianship and control of said Indians as aforesaid, respectively.

SEC. 3. That where the treaty liabilities of the United States Government to any of the said Indians are not in the form of stocks or bonds, but are provided for by annual appropriations, Congress shall make annual appropriations equal in amount to the said treaty liabilities of the Government to said Indians, which appropriations shall be paid to the several States, respectively, to which such Indians have been transferred, during the period for which said liabilities shall continue, which appropriations shall be expended for the sole use and benefit of said Indians, as the States in their legislative capacities shall decide.

SEC. 4. That the title of the United States to all reservations of land held for and occupied by the Indians mentioned in the preamble to this act, or any of them, shall vest in the State so assuming control of said Indians: Provided, That said lands shall not be disposed of excepting for the benefit of the tribe or band of Indians holding the possessory or other title to or occupying such lands as a home or reservation at the time of the transfer.

SEC. 5. That on the acceptance by the States mentioned in the first section of this act, or any of them, of the guardianship and control of the Indians as aforesaid, and the transfer of the bonds and balances of appropriations mentioned in the second section of this act, the guardianship and control by the United States Government over said Indians named in the preamble to this act shall cease and determine, and all records, accounts, and documents in the Indian Bureau, or certified copies of the same, which may be necessary to enable said States to carry out the terms of the trust herein imposed, shall be transferred to the several States, respectively.

On December 13, 1877 the Senate confirmed the nomination of E. A. Hayt of New York, who had entered upon duty under a temporary appointment as Commissioner of Indian Affairs on September 27, 1877. In his first annual report, issued in the autumn of 1877, Commissioner Hayt listed the essential requirements of the Indian Service as follows:

(1) A code of laws for Indian reservations and means for enforcement.
(2) Provision for the enforcement of order and laws by means of a force of Indian police under white officers.
(3) The endowment of the Indians with lands divided into farms of convenient size, the title to which should be vested in individuals and be inalienable for twenty years; and the promotion in every feasible way of a knowledge of and a taste for agricultural pursuits among the Indians.
(4) The establishment of the common school system (including industrial schools) among them, with provision for compulsory education of the Indian youth in such schools.
(5) Opportunities for the free access to the Indians of Christian teachers and missionaries.

(6) The institution of a wise economy in feeding and clothing them.

(7) The steady concentration of the smaller bands of Indians upon the larger reservations and a discontinuance of the removal of the northern Indians to the Indian Territory.

The recommendation against further concentration of northern Indians in Indian Territory was a complete reversal of the recommendation of Commissioner J. Q. Smith in his report for 1876. Hayt gave the change in climate as the reason for this, but recommended that the Indians of Colorado, Arizona and New Mexico be moved to Indian Territory because of "the climate being favorable to them." The pressure for a reduction in the cost of administration of Indian Affairs and the public resentment against the alleged furnishing of luxuries to Indians who were believed to be living in idleness was becoming more pronounced. In a report of September 1, 1874 to Commissioner E. P. Smith, Thomas N. Chase, Agent at Keshena, Wisconsin, had stated: "The use of tobacco has been discouraged, and 'free tobacco' has been abolished." In his report for 1878 Commissioner Hayt remarked that: (p. iv) "The issuing of sugar, coffee and tobacco, except in return for labor, has been forbidden in most cases." In the same report Hayt said: (p. iii)

> The attention of agents has been called to the necessity of bringing their Indians to self support at an early day, and education in the fields has been made a prominent feature in the teaching of the school children.[3]

The demand for a reduction in the cost of Indian administration, the pressing need for additional land upon which a rapidly expanding white population might settle, and the fear of Indian outbreaks after the complete annihilation of General Custer's command in 1876, all prompted those in charge of Indian Affairs to seek means of concentrating the Indians. A new era of consolidation seemed about to materialize. In his report for 1878, Commissioner Hayt said: (p. iv)

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[3] Compare act of June 22, 1874 (18 Stat. 176), Sec. 3 and act of Mar. 3. 1875 (18 Stat. 449), Sec. 3, requiring Indians between the ages of 18 and 45 years to perform services for the benefit of themselves or the tribe in return for supplies furnished.

> During the last session of Congress, at the verbal request of the House Committee on Indian Affairs, a bill was drawn in this Office and sent to the Committee, providing for the removal and consolidation of certain Indians in the States of Oregon, Colorado, Iowa, Kansas, Nebraska, Wisconsin, and Minnesota and the Territories of Washington and Dakota.
>
> The objects sought to be obtained by the bill were as follows:
>
> *First*, the reduction of the number of agencies, and consequently a large annual reduction of the expense attending the civilization of the Indians and the management of their affairs.
>
> *Second*, the consolidation of the Indians upon reservations where they might be best protected in their personal and property rights.
>
> *Third*, the sale of the lands vacated by the consolidation, and the use of a portion of the funds arising therefrom in the removal and settlement of the Indians, the remainder to be funded for their benefit.
>
> The Indians embraced in the bill now occupy 36 reservations containing 21,922,507 acres of land under charge of twenty-six agents and the necessary attendants, teachers and other employees. Upon the reduction proposed in the bill they will occupy nine reservations, containing 4,239,052 acres, under the charge of nine agents, all of whom are now provided for by law. A reduction of 25 reservations and 11 agencies will thus be effected. There will be restored to the public domain 17,642,455 acres of land, and an annual saving in agency expenses to the amount of $120,000 will be effected.
>
> Since the presentation of the bill to the committee a more particular investigation of the subject has convinced me that further consolidations of like character are not only possible, but expedient and advisable. There is a vast area of land in the Indian Territory not yet occupied. Into this should, and may, be gathered the major portion of the Indians of New Mexico, Colorado, and Arizona. The Klamath Indians of Oregon can, with material advantage to themselves and the Government, be removed to the Yakama Reservation in Washington Territory, to which reservation the Bannocks and Malheur Indians will also be immediately sent. This policy should also be pursued with the Indians of Western Dakota, Montana, Idaho, and other sections; the paramount object being to locate them on good agricultural lands to which permanent

title can be given, and to sustain and aid them thereon until they become self-sustaining.

Among the most radical defects of the policy formerly pursued with the Indians has been the frequent changes in their location which have been made, and the fact that the method of distributing the annuities which they have received under various treaties has, in general, encouraged them in idleness and dependence on the government, whereas they should have been used in locating them in permanent homes and in educating them in agricultural and other civilized pursuits. But a small proportion of the lands now occupied by the Indians is utilized for any purpose. They are, in the main, dependent upon the charity of Congress for the little aid that is given to assist them in agricultural pursuits, and in many cases the meagre amount given, however honestly expended, is wasted on account of its insufficiency to accomplish the desired ends. In my judgment, permanent homes, sufficient aid to enable them to build houses, cultivate the soil, and subsist them until they have harvested their first crops, will wean them entirely from their old methods of life, and in the course of a few years enable them to become entirely self-supporting. * * *

By following these views to a legitimate conclusion, the 74 agencies now existing by law can, with material benefit to the Indians, be reduced to a very limited number. An opportunity will thus be given the Indians to earn a sufficient support for themselves. * * *

The constant removals incident to the former land policy of the Indian Service have been freighted with evil consequences to the Indians. Even when placed upon reservations they have come to consider, notwithstanding the most solemn guarantees from the United States that the same should be kept sacred and remain theirs forever, that the title to their land is without permanency, and that they are subject to be removed whenever the pressure of white settlers upon them may create a demand for their lands either before Congress or the Department. So fixed has this opinion become among the more civilized tribes, that in the main they decline to make any improvement upon their lands, even after an allotment in severalty has been made, until they have received their patents for the same.

But after the issue of patents, the difficulties surrounding them do not cease. A few, it is true, hold to their land and make rapid and encouraging progress in agricultural pursuits. The major portion of them, however, yielding to the pressure surrounding them, fall victims to the greed of unscrupulous white men, and, one by one, part with or are defrauded of their lands. Every means

> that human ingenuity can devise, legal or illegal, has been resorted to for the purpose of obtaining possession of Indian lands. * * *
>
> In some cases title in severalty in fee simple has been given to the individual members of a tribe for a certain quantity of lands embraced in the reservation. Experience has shown that even the most advanced and civilized of our Indians are not capable of defending their lands when title in fee is once vested in them.

Hayt mentioned land sharks, whisky, fake documents, and mortgages as affording means by which the Indians soon lost title to their lands and cited with some particularity the experience of the Chippewa in the Southern peninsula of Michigan saying that: (p. ix)

> Out of 1735 Indians to whom patents were issued about the year 1871, on the Chippewa Reservation of Isabella County, Michigan, fully five-sixths have sold, or in some manner have been cheated out of, their lands. * * * One of these selections was purchased for $15, and the party who purchased it has been offered $4,000 for it. * * * These Indians are citizens and voters, and a few of them hold office in the town where they reside. The investigations heretofore made show that the most intelligent of them have been victims of some of the practices above enumerated. * * *
>
> Under numbers of the treaties with the different tribes, patents have issued restricting the right of sale, except upon the approval of the Secretary of the Interior and the President. In cases of this character, where the guards against fraud would appear to be sufficient to insure the most perfect good faith and to prevent a sale by a party not entirely competent to transact his own business, the records of the Office show that frauds have been committed. Instances of this character will be found in the history of the Shawnee, Miami, Sac and Fox, Pottawatomie, and other Indians of Kansas, to whom patents in fee or otherwise were issued, and who have been despoiled of their lands, and to whom the Government has since been compelled to afford an asylum in the Indian Territory.
>
> It has been strongly urged that citizenship should be extended to all of the so-called civilized Indians. Such citizenship if conferred indiscriminately, would, in my judgment, while the Indians are in their present transition state, be of incalcuable damage to them. We should move slowly in the process of making Indians citizens.

Hayt continued with a discussion of the various features of the problem of devising a plan that would protect the interests of the Indians and at the same time develop in them the ability to support themselves and concluded: (p. x)

> After a careful consideration of this important question, I have come to the conclusion that as fast as the Indians are consolidated upon reservations, as recommended in another part of this report, or in cases where they are now located on good agricultural lands, where it is deemed best that they should remain, the Secretary of the Interior should be authorized by a law applicable to all tribes to allot the lands in such reservations among the Indians belonging thereon, in tracts not exceeding 160 acres to each head of a family, or 80 acres to each single person over 21 years of age, and to issue patents therefor without the right to sell, mortgage, lease or otherwise alienate the same for the term of twenty-five years from the date of the patent, after which time the same may be alienated under such rules and regulations as the Secretary of the Interior, for the time being, may see fit to impose; said lands so patented to be exempt from taxation and from levy or sale under process of any court for a like term of years; all property acquired by the Indians, aside from the lands received from the Government as above suggested, and the annuity or other tribal funds derived under any treaty with the Government, to be subject in all respects to the laws of the State or Territory in which the party may reside. This may be accomplished by retaining the reservation intact for all purposes connected with the title of these lands. * * * A bill embracing the material points above indicated will be prepared for submission at the coming session of Congress.

Notwithstanding the fact that reports to the Commissioner, such as that of Agent George W. Lee of the Mackinac Agency, dated September 1, 1878, and published (p. 75) in the Commissioner's report for that year, disclosed that many of the Indians who had been allotted under previous treaties had disposed of their lands for a fraction of their real value, the theory that allottment of land in severalty was essential to a solution of the Indian problem constantly gained ground. Hayt cited the success in agricultural pursuits by the Sisseton Sioux, the Santee Sioux of Nebraska, the Chippewa at White Earth, Minnesota, and the Yakima of Washington as demonstrating the soundness of a policy of assigning lands to individual Indians. In a report of August 26, 1878 to Commissioner Hayt, John W. Douglass, Agent for the Yankton Sioux wrote: (p. 48, Com'r's Rep.)

> Let The Indian be assured that he can have a homestead of his own, and thus enjoy for himself and his children the fruits of his labor undisturbed, and he will soon demonstrate how long and how well he can labor for himself, and how soon become self-supporting.

In 1874 Secretary Delano, who was credited to Ohio, had recommended that the homestead privilege be extended to Indians and by Secs. 15 and 16 of an Act of March 3, 1875 (18 Stat. 420) this was done. His successor, Zachariah Chandler of Michigan stated officially that the Indians were showing a general desire to adopt a more settled life and in 1876 indicated his approval of the allotment plan. In 1877 Carl Schurz of Missouri, who had become Secretary of the Interior, recommended allotments to heads of families on all reservations as a civilizing agency, and in 1879 Schurz stated that the Indians of many agencies were urging that their land be allotted.

An allotment bill was introduced at the second session of the 45th Congress, convened in December 1878, and reported upon favorably by committees of both houses of Congress:[4] and a joint committee which had been selected to consider a proposal for the transfer of the Bureau of Indian Affairs to the War Department reported adversely thereon but recommended a general allotment act providing for patents in fee with a twenty-five year restriction upon alienation.[5] No final action was taken in this Congress. A similar bill was introduced at the extra session of the 46th Congress early in 1879, as House Bill No. 354, but failed to pass. At the second session of the 46th Congress House Bill No. 5038 was introduced as a substitute for H. R. No. 354. H. R. No. 5038 was more comprehensive than the previous bill and had the unqualified approval of the Commissioner of Indian Affairs. It was favorably reported by the House Committee on Indian Affairs. Senate Bill No. 1773 providing for allotment and extending over Indian tribes the protection of the laws of the State or Territory where they resided and making the Indians amenable thereto was before the third session of the 46th Congress. Both H. R. 5038 and S. 1773 failed of passage.

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[4] Cong. Rec. Jan. 31, 1879, p. 864; House Rep. No. 165, Mar. 3, 1879, 45th Cong., 3d Sess. Ann. Rep. Com. Ind. Aff., 1879, p. iv; 1880, p. xvi, xvii; 1881, p. xxii.

[5] House Rep. No. 93, Jan. 31, 1879, 45th Cong. 3d Sess. See also Cong. Rec. Jan. 12, 1880, p. 274; Mar. 8, 1880, p. 1394; May 19, 1880, p. 3507; House Rep. No. 1576, May 28, 1880, 46th Cong. 2d Sess.

In his annual report for the year 1879 Commissioner Hayt said (p. iv): " The more intelligent and best disposed Indians are now earnestly asking for a title in severalty to their lands as a prelininary to supporting themselves from the products of the soil."

In the annual report for 1880 Acting Commissioner Marble declared that: " The demand for title to lands in severalty by the reservation Indians is almost universal." At page 25 of this report is printed a letter from Agent W. E. Daugherty of the Crow Creek Reservation in which it is said:

> Almost every family is anxious to obtain a homestead in which it will have a definitive title, which may be transmitted to the natural successors. Apprehension of removal to make way for the extension of the white race is the main cause of this movement.

And a report of September 1, 1880 from Agent E. Stephens of the Green Bay Agency at Keshena, Wis., printed at p. 170 of the Commissioner's annual report for 1880, records that among the Menominees:

> The loud cry of this tribe is for the sale of the pine, and that three or four years be given the purchasers to lumber it off, and that the lands be allotted to each member of the tribe.

On May 4, 1881 Hiram Price of Iowa became Commissioner of Indian Affairs. In his annual report, issued late in that year, Price advocated the allotment of land to Indians and said regarding the allotment:

> Let it be inalienable for, say twenty years; give the Indian team, implements and tools amply sufficient for farming purposes, give him seed, food, and clothes for at least one year; in short give him every facility for making a comfortable living, and then compel him to depend upon his own exertions for a livelihood. Let the laws that govern a white man govern an Indian. The Indian must be made to understand that if he expects to live and prosper in this country he must learn the English language and learn to work.

Price declared that the existing allotment plan was crude; some of the treaties, authorizing allotments, making provision for patents with a restriction upon the power of alienation; others merely authorizing certificates of allotment which carried no title whatever. He said that: " this system of allotment, so far as carried into effect, has been fraught with much success and encouraging improvement." However, he said, the Indians were apprehensive because they had no sure title. He repeated the statement of the Marble report of 1880 that: " the desire to take lands in severalty is almost universal among the Indians." Price quoted Special Agent C. A. Maxwell to the effect that the Crows in council had expressed a desire to live like white men; James McLaughlin, Agent at Devil's Lake as saying of the Indians of his jurisdiction that, " nearly all of them are located on individual claims "; Captain W. E. Daugherty, Acting agent at Crow Creek, as saying: " Last spring the demand of the Indians for the subdivision of the land and the allotment of it in severalty became general; " and Agent Isaiah Lightner at Santee to the same effect. Price reported (p. xxv) that 5972 allotments had been made, 2793 of which had been patented, and for 1353 of which certificates had been issued. He referred to the efforts of his predecessors to secure the amendment of Secs. 15 and 16 of the act of Mar. 3, 1875, extending to Indians the benefits of the Homestead act of May 20, 1860, so as to relieve Indians of paying fees and commissions and indicated his approval of a requirement in the act of 1875 that Indians must have abandoned tribal relationships to enjoy the benefits of the act. (See Rev. Stats. Secs. 2290-2292, and 2295-2302.)

In his second annual report, that of 1882, Commissioner Price repeated the recommendation of his previous report as to allotment; quoted Malthus at some length as to the stimulus of private property; and repeated his recommendation that the homestead act be modified to relieve Indians of fees and commissions. He reiterated his belief in the allotment system by declaring that: " In no case where allotments have been made and the titles secured, with proper restrictions, have any other than the best results followed."

In his report for 1883 and 1884 Commissioner Price gave but slight attention to land matters, but mentioned the Indian Homestead act of July 4, 1884 (23 Stat. 96) in the latter. He also expressed confidence in the 1884 report that in the near future " the Indian will be able to care for himself, and be no longer a burden, but a help to the Government." Accompanying the annual report for 1884 was a letter from John G. Gassman, Agent for the Crow Creek and Lower Brule Indians, in which the agent stated: (p. 27)

> Constant applications are made to me for allotments of land, by Indians who desire to settle upon claims of their own, make improvements and become property holders in severalty. Owing to the fact that I have no surveyor to do this work, I am compelled to put these applicants off indefinitely, to their great discouragement and injury.

The treaty of 1868 had provided for allotments.

A statement in a report by Agent Benjamin W. Thompson that accompanies Price's report is significant as to the allotment of the Sissetons in 1876: " at that time the larger part of the people were really incapable of making a proper selection of lands for farming purposes. They sought fuel, water, and shelter, and hence huddled into ravines along the Couteux, or in the fringes of the timber about the lakes."

While treaties that had been negotiated prior to 1871 with a large number of groups of Indians in California and with a few in other States were never ratified by Congress, the process of reducing the area occupied by Indians continued in many States and Territories. Under an agreement confirmed by an act of June 5, 1872 (17 Stat. 226), the Flatheads of Montana agreed to remove from their ancestral lands in the Bitterroot Valley and to settle in the Jocko River valley and adjacent lands; and by another act of the same date (17 Stat. 228) lands in Indian Territory were assured to the Great and Little Osage who had ceded their lands in Kansas. An act of June 10, 1872 (17 Stat. 391) accepted cessions from the Omaha, Pawnee and Sauk and Fox tribes in Nebraska and from the Oto and Missouri in Nebraska and Kansas. On April 15, 1874

(18 Stat. 28) the Congress defined a reservation for the "Gros Ventre, Piegan, Blood, Blackfeet, River Crow and such other Indians as the President may, from time to time, see fit to locate thereon" as comprising the entire area north of the Missouri and Marias rivers between the western border of the Territory of Dakota and the Rocky Mountains. This act was directed to the confinement of these Indians within a definite area. An act of March 3, 1873 (17 Stat. 633) reduced the area of the Round Valley Reservation in California and one of December 15, 1874 (18 Stat. 291) approved a cession by the Shoshoni of Wyoming. An act of December 29, 1874 (18 Stat. 36) ratified the cession of a part of their lands by the Ute of Colorado and Utah and one of June 15, 1880 (21 Stat. 199) confirmed an agreement with the Ute under which three separate groups agreed to take allotments upon agricultural lands on the La Plata River, the Grand River and in the Uintah Basin and to cede extensive areas to the United States. The later act was modified by acts of May 14, 1884 (22 Stat. 22), May 24, 1888 (25 Stat. 157), February 20, 1895 (28 Stat. 677) and June 4, 1898 (30 Stat. 429). A Winnebago act of January 18, 1881 (21 Stat. 315) provided for the payment of certain funds to Winnebago Indians in Wisconsin on condition that satisfactory evidence was presented that they had actually settled upon homesteads.

In line with the public demand for the concentration of Indians within Indian Territory, so far as practicable, several agreements were made with Indian tribes and acts passed by Congress, subsequent to 1871, authorizing removal and providing for the sale of lands previously held by such Indians, especially in Kansas and Nebraska. Of this character were the act of April 10, 1876 (19 Stat. 28) regarding the Pawnee, an act of August 15, 1876 (19 Stat. 208), one of March 3, 1881 (21 Stat. 380), another of March 3, 1885 (23 Stat. 351) and still another of January 26, 1887 (24 Stat. 367) with respect to the removal of the Oto and Missouri, the Sauk and Fox and the Iowa tribes. A similar object was sought in an act of February 28, 1877 (19 Stat. 254) ratifying an agreement with certain bands of Sioux and Northern Arapaho and Cheyenne and in an act of March 3, 1881 (21 Stat. 414) providing for the purchase of lands in Indian Territory for the settlement of the Poncas of Nebraska.

On March 4, 1885 Grover Cleveland became President and on March 20 the Senate confirmed the nomination of John D. C. Atkins of Tennessee as Commissioner of Indian Affairs, who assumed the duties of his office on the following day. The change from a Republican to a Democratic administration does not appear to have affected materially the policies of the Indian Service. In his first annual report, Commissioner Atkins, in discussing the future of the Indians said: (p. iv)

> It should be industriously and gravely impressed upon them that they must abandon their tribal relations and take lands in severalty, as the corner stone of their complete success in agriculture, which means self-support, personal independence, and material thrift. * * * The advantages to the Indians of taking their lands in severalty are so far reaching in their effects that I fear to dwell upon them in this report lest I be accused of drawing a roseate picture born of an enthusiastic imagination. Every Indian may own a homestead! For it will be his homestead if he takes land in severalty and disolves the tribal relation. Contrast his situation with that of millions of white families in this country, to say nothing of the large number of homeless people in the Old World, and of the negroes of the southern States. What a heritage! * * * Every step taken, every move made, every suggestion offered, everything done with reference to the Indians should be with a view of impressing upon them that this is the policy which has been permanently determined upon by the Government in reference to their management. They must abandon tribal relations; they must give up their superstition; they must forsake their savage habits and learn the arts of civilization; they must learn to labor, and must learn to rear their families as white people do, and to know more of their obligations to the Government and to society.

Atkins advocated the immediate issuance of trust patents to Indians who had taken individual holdings but the maintenance of the trust by the United States for twenty-five years. He suggested a variation in the number of acres in each allotment according to fertility, climate and other conditions, and that the funds derived from the sale to the Government of the reservation lands remaining after allotment be used to educate and civilize the Indians. Remarking upon the progress of the San Carlos Apache in agriculture, Atkins predicted that within a year or two they would be self-sustaining and independent. He dwelt upon the reaction of the Indians to the development of responsibility upon them; explained that one of the strong arguments against the concentration of Indians in Indian Territory was the opposition of Arkansas, Kansas, Missouri and Texas; and suggested that the Indians of Michigan, Wisconsin and Minnesota be concentrated upon the Red Lake and White Earth reservations in Minnesota. A letter from agent Thompson of the Sisseton Sioux, printed with this report (p. 48), declared that the Indians were trying to comply with the requirement as to the cultivation of their lands so that they might receive patents therefor, just as agent Isaiah Lightner had reported on August 14, 1884 (p. 122 of Com. Rep. for 1884) that the Santee Sioux, who held their allotments under article 6 of the Sioux treaty of 1868 requiring them to occupy the land three years and make improvements with a value of $200 before they could receive patents for 160 acres, were anxious to receive patents. Agent James G. Wright of Rosebud, reported (p. 44) that many of the Rosebud Sioux desired to take their lands in severalty, but were influenced by their chiefs against an open expression of their desires; and agent J. F. Kinney of Yankton ascribed the reluctance of the Yankton to take allotments to the opposition of the chiefs to an allotment of 160 acres instead of 480 acres for themselves. (p. 59)

From 1880 onward the attention of the advocates of an allotment policy was centered largely upon the Coke bill which had been presented to the Senate in that year, apparently upon the suggestion of Secretary Schurz of the Interior Department.[6] The provisions of this bill were essentially the same as those of the Dawes bill that was finally enacted into law in 1887 except that it did not provide for citizenship of allottees.[7] This bill passed the Senate in 1884 and again in 1885 and in the latter year was favorably reported in the House.[8] While this bill was pending in the Congress several special allotment acts were passed, embodying the principles of the Coke bill. These were the Crow act of April 11, 1882 (22 Stat. 42); the Omaha Act of August 7, 1882 (22 Stat. 341); and the Umatilla act of March 3, 1885 (23 Stat. 340). The Omaha act provided for 160 acres to the head of a family, 80 acres to single persons over 18 years of age and to each orphan child under 18 years, and to each other person under eighteen years of age 40 acres. These allotments were to be held in lieu of the allotments or assignments provided for in the fourth article of the treaty with the Omaha of March 6, 1865. Preference rights were given to those who had received certificates to land under the said treaty and to those who were entitled to receive certificates and who had actually settled upon and improved lands, even though the lands had been assigned to other Indians who had never occupied or improved such tracts.

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[6] Proc. of 3d Ann. Meeting of Lake Mohonk Conference of Friends of the Indians (1885); see Misc. Doc. Rel. to Ind. Aff., Vol. XIII, p. 10132, Ind. Of. Lib.

[7] Cong. Rec., Jan. 20, 1881, pp. 778, 779; *ibid.*, Jan. 24, 1881, pp. 875-882.

In his annual messages to Congress in both 1885 and 1886 President Cleveland indicated his approval of the allotment policy.[9] In 1886 General Philip Sheridan, reporting to the Secretary of War, advocated the allotment of lands in severalty to Indians.[10] While there were individuals and associations opposed to the theory that allotment was essential to the advancement of the Indian or best adapted to the assurance of his happiness, there can be no doubt that the great majority of those interested in the subject favored a general allotment act, nor does there seem to be any reason to doubt that the motives of the advocates of allotment were generally above reproach. The leading associations organized for the specific purpose of protecting the rights and encouraging the advancement of the Indians strongly favored the proposed general allotment act.[11]

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[8] House Rep. No. 2247, Jan. 9, 1885, 48th Cong. 1st Sess.; Rep. Com. Ind. Aff. 1884, p. xiii; 1885, p. xv.

[9] Geo. F. Parker, *Writings and Speeches of Grover Cleveland*, pp. 410-415; Richardson, *Messages and Papers of the Presidents*, X, pp. 4940-4943; *ibid.*, p. 5103 *et seq.*

[10] Misc. Doc. Rel. to Ind. Aff., XV, pp. 11660-11663, Ind. Of. Lib.

[11] Cong. Rec., Dec. 15, 1886, p. 196; Ann. Rep. Com. Ind. Aff. 1880, p. xvii;

Possibly the most formidable opposition to the proposed general allotment act emanated from Indian Territory. In reporting adversely under date of March 3, 1879 upon House Bill No. 1596 to provide for the organization of the Territory of Oklahoma, a Committee of the House reviewed quite thoroughly allotment plans:[12] The Committee declared that the allotment plan, as carried out under the Manypenny treaties of 1853 to 1855, had tended to pauperize the tribes that had emigrated to Kansas and been allotted there.[13] It was asserted that within little more than a decade after allotment, many of the Indians recognized the plan as a failure and the United States officials were considering plans for the removal of such Indians to lands within Indian Territory which they should hold in common. Of the six recommendations presented by seven members of the House Committee, the first four maintained that the United States should not abrogate its agreements to hold the Indian Territory for the Indians and the last two were as follows:

> (5) That while official recommendations, some of them entitled to the highest respect, are strongly in favor of making Indians citizens of the United States, and transferring their land titles from the national tenure in common to the individual tenure in severalty, experience has shown that in the great majority of cases, such measures, instead of benefiting, have proved injurious to the Indians.
>
> (6) That experience fully demonstrates that the holding of their lands in common by the Indian tribes is an effectual safeguard against the worst effects of Indian improvidence. Apart from any consideration of justice or humanity, it would be unwise and unstatesmanlike to adopt measures which, by destroying that safeguard, would be calculated

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Misc. Doc. Rel. to Ind. Aff., XV, pp. 11968, 11969; XII, p. 8744-8789; XIII, p. 10141-10263. See also Senate Exec. Doc. No. 54, 47th Cong. 1st Sess., Message of Pres. Chester A. Arthur, Jan. 18, 1882, suggesting an allotment act; in Misc. Doc. Rel. to Ind. Aff., VII, p. 5280. Also Memorial of Omak tribes asking for allotments, Sen. Misc. Doc. 31, 47th Cong. 1st Sess.; p. 5239 of Misc. Doc. Rel. Ind. Aff., VII.

[12] House Rep. No. 188, 45th Cong. 3d Sess., in Misc. Doc. Rel. Ind. Aff., VII, p. 5566.

[13] *Ibid.*, pp. 5577, 5579, 5580, 5593, 5594.

> to reduce the great mass of them, in opposition to their own earnest protests, to a state of hopeless penury and degradation.

A memorial of the Creek Nation, dated January 29, 1883, to Congress was directed against the transfer of the title, or fee, of Creek lands from the nation to individuals.[14] The memorial directed attention to the failure of the Sauk and Foxes, Kaw, Delaware, Potawatomi, and Ottawa to succeed under the allotment system and to the subsequent general abandonment of the plan and the removal of these Indians to Indian Teritory. They referred to the report of the House Committee in 1879 above quoted.

However, others who studied the Indian question, or visited the Indian country to obtain first hand impressions as to conditions, viewed the situation from an entirely different standpoint. Just as two persons looking at the same painting from different angles and with varying lights upon it may form entirely different opinions as to the qualities of the production; so, it seems, those who saw the Indian problem from different points of view formed widely divergent opinions as the conditions that actually existed and as to the steps necessary to an improvement of conditions.

In his second annual report, that for the year 1886, Commissioner Atkins referred to " the growing desire to take lands in severalty "; quoted approvingly from his 1885 report regarding the making of allotments; and, in discussing at length conditions among the Five Civilized Tribes in Indian Territory, said: (p. vi)

> At present the rich Indians who cultivate tribal lands pay no rent to the poorer and more unfortunate of their race, although they are equal owners of the soil. The rich men have too large homesteads and control many times more than their share of the

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[14] House Misc. Doc. No. 18, 47th Cong. 2d Sess., in Misc. Doc. Rel. Ind. Aff., VII, 5539. See p. 5555 quoting Lewis Cass as admitting in 1835 the failure of allotment. Cf. Com. Ind. Aff., 1876, p. 96; 1877, p. 119; 1878, pp. ix, 75; 1884, p. 49; 1885, pp. 30, 133; 1886, pp. xx, xxi; Misc. Doc. Ind. Of. Lib., XV, p. 11571; Cong. Rec., Jan. 20, 1881, p. 781; House Rep. 1576, May 28, 1880, 46th Cong. 2d Sess., pp. 5, 8.

> lands. * * * Already the rich and choice lands are appropriated by those most enterprising and self-seeking. A considerable number of Indians have in cultivation farms exceeding 1,000 acres in extent, and a still larger number are cultivating between 500 and 1,000 acres, with the right, according to their system (as I understand the fact to be), of adding nearly 1,000 acres more by excluding all others from the use or occupancy of a quarter of a mile in width all around the tract fenced. What a baronial estate! In theory the lands are held in common under the tribal relation, and are equally owned by each member of the tribe, but in point of fact they are simply held in the grasping hand of moneyed monopolists and powerful influential leaders and politicians who pay no rental to the other members of the tribe, who, under their tribal ownership in common, have equal rights with the occupants.

Atkins then spoke of a case that came under his personal observation in the Cherokee nation in 1885 and said:

> The owner cultivated this farm with laborers hired among his own race—perhaps his own kith and kin—at $16 per month and they lived in huts and cabins on the place without a month's provisions ahead for themselves and families. * * *
>
> Now this condition of semi-slavery, shall I call it, exists in each one of the five civilized nations, and grows directly out of the holding of lands in common, and is necessarily inherent in this system of tenantry. Agent Owen, in his report [found at p. 157 of the Commissioner's annual report] says: 'The Washita valley in the Chickasaw Nation is almost a solid farm for fifty miles. It is cultivated by white labor largely, with Chickasaw landlords. I saw one farm there said to contain 8,000 acres, another 4,000, and many other large handsome places.' * * *
>
> I have no documentary statistics from which I can form an accurate idea of the proportion of the population in the several nations who are hireling day-laborers; but I have been personally informed by very intelligent resident citizens that the ratio of this class in the Cherokee Nation, including those who cultivate less than five acres, is one-sixth of the whole; among the Choctaws, Chickasaws, and Creeks about one-fourth; and that among the Seminoles the ratio is even larger.

Speaking of the influential members of the Five Tribes, Atkins said that they looked solely to the Indian Office for protection from the whites; yet, though the United States army had stood guard over them for fifty years, they would not second the efforts of the government to secure an equitable allotment of their lands. He presented a table to show that there was enough land within the area occupied by the five nations to give to each member of the Cherokee 228 acres, of the Creeks 217 acres, of the Chickasaw 417 acres, of the Choctaw 417 acres, of the Seminole 125 acres. If, said Atkins, 160 acres were given to each adult and 80 acres to each minor there would be a large surplus, the proceeds from the sale of which might be used to advance all. He recognized the sentiment of the Indians against dissolving their tribal relationships, but argued that the maintenance of a distinct sovereignty within the United States and the demand for protection at the same time was inconsistent. He remarked that: " The general allotment bill again passed the Senate at the last session and was favorably reported in the House. As there seems to be no substantial opposition to this bill, it is hoped it will become a law during the coming winter."

In his third annual report, that for the year 1887, Commissioner Atkins was able to say:

> The general allotment act, the plan for which was first suggested in the annual report of this Office for 1878, became a law on the 8th of February last.

Senator Henry Laurens Dawes of Massachusetts, who had been a member of the national legislature for thirty years, had taken a leading part in the advocacy of the general allotment bill during the final stages preceding its enactment and the measure that became an act by the signature of President Cleveland on February 8, 1887 (24 Stat. 388) has generally been known as the " Dawes General Allotment Act." The act will here be quoted in full.

GENERAL ALLOTMENT ACT.

ACT OF FEBRUARY 8, 1887 (24 Stat. L., 388).

AN ACT To provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or Executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *And provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: *And provided further*, That when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

SEC. 2. That all allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

SEC. 3. That the allotments provided for in this act shall be made by special agents appointed by the President for such purpose, and the agents in charge of the respective reservations on which the allotments are directed to be made, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and shall be certified by such agents to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and the other to be transmitted to the Secretary of the Interior for his action, and to be deposited in the General Land Office.

SEC. 4. That where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, act of Congress, or Executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in this act for Indians residing upon reservations; and when such settlement is made upon unsurveyed lands, the grant to such Indians shall be adjusted upon the survey of the lands so as to conform thereto; and patents shall be issued to them for such lands in the manner and with the restrictions as herein provided. And the fees to which the officers of such local land office would have been entitled had such lands been entered under the general laws for the disposition of the public lands shall be paid to them, from any moneys in the Treasury of the United States not otherwise appropriated, upon a statement of an account in their behalf for such fees by the Commissioner of the General Land Office, and a certification of such account to the Secretary of the Treasury by the Secretary of the Interior.

SEC. 5. That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefore in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: *Provided,* That the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: *Provided,* That the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except as herein otherwise provided; and the laws of the State of Kansas regulating the descent and partition of real estate shall, so far as practicable, apply to all lands in the Indian Territory which may be allotted in severalty under the provisions of this act: *And provided further,* That at any time after lands have been allotted to all the Indians of any tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with such Indian tribe for the purchase and release by said tribe, in conformity with the treaty or statute under which such reservation is held, of such portions of its reservation not allotted as such tribe shall, from time to time, consent to sell, on such terms and conditions as shall be considered just and equitable between the United States and said tribe of Indians, which purchase shall not be complete until ratified by Congress, and the form and manner of executing such release shall also be prescribed by Congress: *Provided, however,* That all lands adapted to agriculture, with or without irrigation so sold or released to the United States by any Indian tribe shall be held by the United States for the sole purpose of securing homes to actual settlers and shall be disposed of by the United States to actual and bona fide settlers only in tracts not exceeding one hundred and sixty acres to any one person, on such terms as Congress shall prescribe, subject to grants which Congress may make in aid of education: *And provided further,* That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void. And the sums agreed to be paid by the United States as purchase money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians; to whom such reservations belonged; and the same, with interest thereon at three per cent per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof. The patents aforesaid shall be recorded in the General Land Office, and afterward delivered, free of charge to the allottee entitled thereto. And if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding one hundred and sixty acres in any one tract, so long as the same shall be so occupied, on such terms as he shall deem just; but nothing herein contained shall change or alter any claim of such society for religious or educational purposes heretofore granted by law. And hereafter in the employment of Indian police, or any other employees in the public service among any of the Indian tribes or bands affected by this act, and where Indians can perform the duties required, those Indians who have availed themselves of the provisions of this act and become citizens of the United States shall be preferred.

SEC. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

SEC. 7. That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservations; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.

SEC. 8. That the provisions of this act shall not extend to the territory occupied by the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, and Osage, Miamies and Peorias, and Sacs and Foxes, in the Indian Territory, nor to any of the reservations of the Seneca Nation of New York Indians in the State of New York, nor to that strip of territory in the State of Nebraska adjoining the Sioux Nation on the south added by Executive order.

SEC. 9. That for the purpose of making the surveys and resurveys mentioned in section two of this act, there be, and hereby is, appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of one hundred thousand dollars, to be repaid proportionately out of the proceeds of the sales of such land as may be acquired from the Indians under the provisions of this act.

SEC. 10. That nothing in this act contained shall be so construed as to affect the right and power of Congress to grant the right of way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation.

SEC. 11. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservation in Southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe.

Approved, February 8, 1887.

Those who advocated a general allotment policy entertained high hopes regarding the beneficial effects that the ownership of land in severalty would have upon the condition and habits of the Indians. They sincerely believed that in the carrying out of such a policy the national government could palliate the wrong that had been done the native race through the introduction of an economic and social system under which the Indians had been compelled, in large measure, to abandon the economy to which they had been accustomed before the white man came to America. Speaking at the Lake Mohonk Conference in 1885, Senator Dawes had said:[15]

> I feel just this; that every dollar of money, and every hour of effort that can be applied to each individual Indian, day and night, in season and out of season, with patience and perseverance, with kindness and charity, is not only due him in atonement for what we have inflicted upon him in the past, but is our own obligation towards him in order that we may not have him a vagabond and a pauper, without home or occupation among us in this land.

The Indian agent for the Yankton Sioux, John G. Gassman, had reflected a common view when he wrote in 1877:[16]

> As long as Indians live in villages they will retain many of their old and injurious habits. Frequent feasts, community in food, heathen ceremonies and dances, constant visiting—these will continue as long as the people live together in close neighborhoods and villages. * * * I trust that before another year is ended they will generally be located upon individual lands or farms. From that date will begin their real and permanent progress.

The declarations that have been quoted on previous pages from annual reports of successive Commissioners of Indian Affairs and Secretaries of the War and Interior Departments were corroborated by members of Congress by expressions of confidence in the efficacy of individual ownership of land as a stimulant to industry and a guaranty of economic independence for the Indian. In discussing the Coke allotment bill in 1881, Senator Pendleton of Ohio, the author of the Civil Service Reform Act known as the Pendleton Act, said on the floor of the Senate:[17]

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[15] Proc. 3d Mohonk Conf., in Misc. Doc. Rel. Ind. Aff., Ind. Of. Lib., p. 10131.

[16] Rep. Com. Ind. Aff. 1877, pp. 75-76; see also Rep. 1873, p. 4; 1876, pp. 58, 59; 1877, p. 51, 121; 1878, p. 48; 1879, p. 25; 1880, p. 2; 1882, p. 86; 1885, p. 21; 1886, pp. ix, x. See also Com. Rep. 1876, p. 114; 1880, p. 136; 1881, p. xxiii; Misc. Doc. I. O. Lib., VII, p. 5246; XIII, pp. 9871, 9872, 10083, 10149; House Rep. No. 1576, May 28, 1880, 46th Cong. 2d Sess., pp. 3-5; Omaha Tribe, 27th Rep. Bur. Eth., Wash., 1911, pp. 247, 622, 623. Cf. Com. I. A. 1887, pp. 56, 57, Report of Yankton Agent.

[17] Cong. Rec., Jan. 25, 1881, p. 906.

> It must be our part to seek to foster and encourage within them (the Indians) this trinity upon which all civilization depends—family, home, and property.

At the Lake Mohonk Conference in 1885, Senator Dawes conceded substantial accomplishments under a communal land system by the Five Civilized Tribes of Indian Territory, but declared:[18]

> Till this people will consent to give up their lands and divide them among their citizens so that each can own the land he cultivates, they will not make much more progress.

However, not all who had given some study to the subject accepted this view. As noted above, conditions among the Five Civilized Tribes in Indian Territory were often cited as indicative of the advance that might be made by Indians under a polity of communal ownership of land.[19] The system of common ownersip of land under which the Indians lived was often confused with communism,[20] and a minority of the House Committee on Indian Affairs reported in 1880 that only under communism had the Indians made any progress. As a matter of fact few, if any, had ever used a communistic economy in the true sense of the term. In the cultivation of their small gardens or fields and the making of canoes, moccasins and other articles, each individual claimed the products of his own efforts. The natives exhibited a commendable attitude of co-operation in the building of irrigation ditches and in organizing group hunting expeditions, but each had his own plot for cultivation and each might claim the buffalo or other game that he killed. From the fact that their social code often forbade that the individual who had plenty should deny a share to his less fortunate friends, the careless observer concluded that all property was held in common.

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[18] Proc. 3d Mohonk Con., in Misc. Doc. I. O. Lib., XIII, p. 10137; see also Com. I. A. to Sec. Schurz, House Rep. No. 165, Mar. 3, 1879, 45th Cong. 3d Sess., p. 2; 3d Rep. Mohonk Con., Misc. Doc., XIII, p. 10149.

[19] See Memorial of Cherokees to Congress, Cong. Rec., Jan. 20, 1881, p. 781.

[20] See House Rep. No. 1576, May 20, 1880, 46th Cong. 2d Sess., p. 10; Rep. Com. Ind Aff. 1882, p. 86; also Rep. 1876, p. 58, 59; 1877, p. 121; 1878, p. 48; 1880, p. 2; 1864, p. 332; Board Ind. Com. Rep., 1889, p. 111; The Omaha Tribe, 27th Ann. Rep. Bur. Amer. Eth., 1906, Fletcher and La Flesche.

Beyond question the Indians, who had not been imbued with the conception of individualistic land ownership through close contact with white civilization, clung tenaciously to the idea of a common ownership and control by the tribe of the lands which they occupied, or over which they were accustomed to roam, to the exclusion of other tribes.[21]

In a minority report upon an allotment bill in 1880 members of the House of Representatives had expressed a doubt that the private ownership of land would transform the habits and character of the Indians saying:[22]

> However much we may differ with the humanitarians who are riding this hobby, we are certain that they will agree with us in the proposition that it does not make a farmer out of an Indian to give him a quarter-section of land. There are hundreds of thousands of white men, rich with the experiences of centuries of Anglo-Saxon civilization, who cannot be transformed into cultivators of the land by any such gift.

In the following year Senator Teller of Colorado in debate ridiculed the idea that Indians could be made into " church-going farmers " in twenty-five years.[23] In subsequent debate Teller denounced the Coke bill as one " to despoil the Indians of their lands and to make them vagabonds on the face of the earth."[24]

On January 20, 1881, with much fervor, Teller had declared:[25]

> If I stand alone in the Senate, I want to put upon the record my prophecy in this matter, that when thirty or forty years shall have passed and these Indians shall have parted with their title, they will curse the hand that was raised professedly in their defense to secure this kind of legislation and if the people who are clamoring

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[21] See House Rep. No. 1576 above, pp. 7 to 10; Cong. Rec., Jan. 20, 1881, pp. 781 to 785.

[22] House Rep. No. 1576 above.

[23] Cong. Rec., Jan. 20, 1881, p. 783.

[24] Cong. Rec., Jan. 26, p. 934.

[25] Cong. Rec., Jan. 20, 1881, p. 783.

for it understood Indian character, and Indian laws, and Indian morals, and Indian religion, they would not be here clamoring for this at all.

The charge was made repeatedly that the chief influence behind the proposal for a general allotment act was the greed of land grabbers, timber exploiters, and those interested in mining and railroads.[26] It is believed that such statements are entitled to the degree of credence that may ordinarily be given to extreme statements of this character when feelings are deeply aroused in connection with proposed legislation. That there were thousands of settlers keenly desirous of making beneficial use of lands lying comparatively unproductive within Indian reservations is certain; that there were lumbermen seeking to obtain timber on Indian lands can be convincingly established; that there were prospectors and speculators cunningly planning to enrich themselves from the mineral resources hedged in by reservation boundaries must be admitted; and that enterprising railroad promoters sought to extend the field of economic production in the West cannot be denied. Yet when these influences are accorded the weight justly attributable to them, the combined effect falls far short of the preponderence that either contemporary or later critics of the general allotment act have alleged.[27] That such influences were operative and contributed to the forces that resulted in the final enactment of the Dawes Act may be accepted without disparagement of the motives of those who sincerely believed that the most effective method of reducing the burdensome cost of Indian administration, of improving the relationships between the races, and of advancing the interests of the Indians consisted in the general application of the allotment policy with which experiments had been conducted since 1817—a period of seventy years.

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[26] House Rep. No. 1576, *supra*; Cong. Rec., Jan. 20, 1881, p. 783, Teller statement. Cf. p. 786; Cong. Rec., Feb. 17, 1886, p. 1559, Senator Morgan statement; but see Rep. Board Ind. Com. 1887, pp. 59, 60 for divergent view. Contra it was charged the cattlemen opposed allotment improperly.

[27] Frederic Bancroft, *Speeches, Correspondence and Political Papers of Carl Schurz* (New York, 1913), IV, p. 142; Board Ind. Com. Rep. 1885; 19th Rep., p. 89; Rep. 1889, p. 58; Rep. Sec. Int. 1880, p. 12; Ind. Com. 1880, p. xvii; Misc. Doc. Ind. Of., VII, pp. 5239-5252; Cong. Rec., Dec. 15, 1886, p. 190; Omaha Tribe, 27th Rep. Bur. Amer. Eth., pp. 635, 636.

Certainly such men as Secretary Schurz, Senator Dawes and President Cleveland cannot be impeached at the bar of public opinion as lacking in sympathy for the Indian or as submissive to the demands of unscrupulous despoilers of the property and welfare of a people almost universally recognized at that time as dependent and incapable of asserting their rights. However mistaken we may think them to have been, however disappointing may have been the results of the plan that they advocated for the advancement of the native American race, we cannot, without stultification of ourselves, denounce the motives of men whose official records are as irreproachable as those of these men and thousands of others in official and private life who joined with them in the movement for general allotment legislation.

Even those who were unconvinced that allotment of lands in severalty would prove of great advantage to the Indians recognized that the race was confronted with a situation in which it would be impossible to hold its title to the vast areas that were then "Indian country."[28] Irrespective of all official efforts to preserve the legal and moral rights of the Indians, the tide of emigration of whites from the East into the West and the flood of immigrants from Europe were threatening to sweep away from the native race the most valuable lands that they held and, as they and their friends believed, leave them a thoroughly pauperized class. The hope of training them in habits of industry and thrift that had actuated missionaries and many public officials in the years following 1817, and again in those following 1852, was revived and a condition was envisaged in which Indians should assume an independent economic status as farmers and artisans.[29] Many felt that the only sure method of retaining the Indian title to lands within existing reservations was to allot the lands in severalty. This view persisted in the

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[28] House Rep. No. 165, Mar. 3, 1879, 45th Cong. 3d Sess., p. 3; Rep. Com. Ind. Aff. 1881, p. xxiv; Board Ind. Com., 1887, p. 89; 1889, p. 58; *Carl Schurz Papers, supra,* IV, pp. 141-146.

[29] Com. Ind. Aff. 1880, p. xvii; and 1881, to 1887.

Indian Service until as late as 1925 when it was seriously and earnestly advanced by a superintendent of an important reservation to refute the writer's opposition to the allotment of forest land within that reservation.[30] That this view was widely held at the time the general allotment act was passed is evidenced by a statement in the annual report of the Indian Rights Association for 1887, reading:[31]

> If any person accustomed to weigh evidence could still think it possible to maintain the old system of the isolation of the Indians and to perpetuate the common ownership of their lands, a little reflection upon the relations of the railroads of the country to the Indian reservations would be sufficient to expel this delusion from his mind finally and forever. * * * This process of opening the reservations to railroads is certain to continue. In most cases the Indians themselves are in favor of it, thus showing that they have a truer conception of the meaning of civilization than is exhibited by the opponents of the severalty law. Most of the objections against this measure which have come to our notice show clearly that their authors are mere theorists, who have little knowledge of the actual conditions of the Indians under the existing order of things. To maintain and perpetuate existing conditions is clearly impossible. It could not be done if we all united in an effort to that end. That was the reason for the enactment of the severalty law. We have to choose between securing something for the Indians—as much as we can get—or having them lose all. The friends of the new law think half a loaf better than no bread, even for Indians. But the law does not, as most of its enemies affirm, take the unallotted lands from the Indians. It leaves such lands in possession of the tribes, exactly as now.

The Women's National Indian Association, which had been organized about four years before the Indian Rights Association, claimed the honor of first advocating the general allotment policy:[32] and Senator Dawes and the Secretary of the Board of Indian Commissioners[33] credited the womens association with a prominent part in the development of sentiment favorable to allotment. However this association never had the funds or, perhaps, the viewpoint and the kind of leadership necessary to enable it to carry on a publicity campaign comparable to that entered upon by the Indian Rights Association in the years 1885 to 1887.[34] The annual meetings of the Lake Mohonk Conference, the first of which was held in the autumn of 1883, did much to crystalize public sentiment in favor of the allotment policy.[35] However as early as 1880 petitions urging a general allotment policy were being presented to Congress from private citizens.[36]

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[30] The Menominee Reservation.

[31] 5th Ann. Rep., 1887, pp. 36, 38; cf. 1st Rep., 1883, p. 5, advocating allotment.

[32] See President's address for 1887 in Misc. Doc. Ind. Of. Lib., XV, p. 11969; also XII, pp. 8744-8789; XIII, pp. 10141, 10247, 10248, 10262; XV, pp. 11576, 11963.

[33] Board Ind. Com. 1890, p. 66; see also Rep. 1876, p. 10; Misc. Doc., XII, p. 8755.

The reports of superintendents of various agencies as to the desire of the Indians for allotment were probably somewhat colored in most cases by belief of the agents that allotment was desirable. While some of the Indians asked for allotment,[37] others registered their opposition, but the forms in which the opposition was presented suggests the assistance of interested whites in the same manner that the petitions in favor of allotment show non-Indian influences at work.[38] In the same report, that for 1886, in which Commissioner Atkins condemned the conditions obtaining among the Five Civilized Tribes as to the use of land resources, there was printed the report of the agent for those tribes in which the statement was made:[39]

> Although this tenure of lands may seem strange to those who have not seen its qualities tested, it is a proposition which from

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[34] 4th and 5th Ann. Rep. 1886, 1887.

[35] Proc. Mohonk Conf., especially for 1885; Misc. Doc. Ind. Aff., XIII, p. 10097; Board Ind. Com., 1883, p. 41; 1887, p. 90; cf. Con. Rec., Jan. 25, 1881, p. 911, Opin. J. W. Powell, Smithsonian Institution.

[36] Com. Ind. Aff., 1880, p. xvii; see 1886, p. xx, instruction to urge allotment.

[37] Rep. Sec. Int. 1875, p. v; cf. his Rep. 1874, p. 12; 1876, p. v; 1877, p. xi; Rep. Com. Ind. Aff., 1876, p. 124; 1878, p. 48, 75, 142; 1879 to Sec. Int., p. 12; 1880, pp. 25, 50, 87, 171; 1881, pp. 22, 25, 132, 177; 1882, p. 112; 1883, p. 160; 1884, 1885, 1886, p. 247, 1887; see Cong. Rec., Jan. 20, 1881. Cf. House Rep. No. 1319, Apr. 28, 1880, 46th Cong. 2d Sess.; Senate Misc. Doc. 31, 47th Cong. 1st Sess.; Misc. Doc. Ind. Off. Lib., IX, pp. 7553-7558; Omaha Tribe, *supra,* 636.

[38] See House Doc. No. 83, Mar. 1, 1882, 47th Cong. 1st Sess.; Com. Ind. Aff., 1883, p. 85; 1886, pp. 98, 99; Misc. Doc. Ind. Off., XIII, pp. 10084, 10137; Cong. Rec., Jan. 20, 1881, pp. 781, 783.

[39] Com. Ind. Aff., 1886, p. 155. Possession was dependent upon use of land.

a public standpoint, might well be argued as superior to the fee simple in the individual. This system precludes a possibility of unjust pauperism so often imposed on worthy labor by force of modern circumstances or ancient customs surviving in modern times. However this question may be argued by political economists, there is no doubt in my mind that this is the true safeguard for the Indian people until they have grown, under the educational influences now working, up to the capacity of full American citizenship, until they are capable to cope with that most ingenious of all thieves, the insidious land swindler.

Senator Teller was largely right when he asserted in debate in 1881:[40] " I say to-day that you cannot make any Indian on this continent, I do not care where he is, while he remains anything like an Indian in sentiment and feeling, take land in severalty." The opposition of the full-blood Indians to allotment persisted in many tribes for many years after 1887 and even through the first third of the twentieth century in a few tribes. On the subject of allotment, as on most questions of policy among the Indians, there was usually a division of sentiment and signed petitions or even votes in assembled councils often failed to reflect the actual desire or judgement of a majority of the members of the tribe.[41] Furthermore, the acceptance of the white man's mode of life by some of the Indians was interpreted to mean that whole tribes were about ready to abandon their tribal relations completely and become confirmed individualists with application of themselves to agarian and industrial life comparable to that of their white neighbors.[42]

In contrast to the reports as to the success that was being attained in making the Indian self-supporting, we find in a report of 1883 from Agent V. T. McGillicuddy of Pine Ridge the following:[43]

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[40] Cong. Rec. Jan. 20, 1881, p. 780; but see letter Director Smithsonian Institute, Cong. Rec., Jan. 25, 1881, p. 911; Com. Ind. Aff., 1883, p. 53; 1885, p. 44; 1887, pp. 88, 112.

[41] Misc. Doc. Ind. Off. Lib., XIII, p. 10084; *ibid.,* p. 6179, giving Sen. Rep. No. 243, 47th Cong. 1st Sess.; Com. Ind. Aff., 1885, pp. lxxi, 169, 170.

[42] Com. Ind. Aff., 1876, p. 97, 114; 1880, p. xxxiv, xl, 137; 1881, p. xxiii, xxiv, 171; 1884, p. 1, 38, 118; 1885, p. 114, 135, 151; 1886, p. 69; Com. remarks re Omahas, but contrast agent's view, pp. 186-187; see also Board Ind. Com., 1887, p. 25; Misc. Doc. Ind. Of. Lib., XIII, 9871, 9872, 10083; VII, p. 5246; House Rep. No. 1576, May 28, 1880, 46th Cong. 2d Sess., pp. 3-5; Omaha Tribe, 27th Ann. Rep. Bur. Amer. Eth., pp. 247, 622, 623.

> As I am somewhat of a 'tenderfoot'; having lived with these people for but seven or eight years, it may appear presumption for me to advance my views in connection with the experts that frequently ventilate themselves in the newspapers, but I hope I may be excused for venturing a few remarks on what appears to be a superfluity of bunkum and red tape in the management of Indians by Congress. It is a very simple matter for members of Congress and officials to resolve that these Indians must become self-supporting, to make spread-eagle speeches as to how to make stock raisers and agriculturists of them. It is interesting to read agents reports of how their good Indians love to work and how they are *rapidly becoming self-supporting etc,* but the fact is, the Indians are a long way from being self-supporting, and never will (be) until there is a radical change in the system. It is not that there is a lack of money appropriated for this agency, but the difficulty is that it is set aside for what is not required, and our ever lasting red tape prevents its being used for any other purpose. The subsistence and other supplies, allowed and furnished my Indians are ample, in fact more than sufficient. If not how is it that I can save $5,000 per year on the issue of supplies? What earthly reason or inducement can be advanced why an Indian should go to work and earn his own living by the sweat of his brow, when an indulgent government furnishes him more than he wants to eat and clothes him for nothing? Select 8,000 whites of the pauper class, or send 8,000 of the 'assisted emigrants' to this reservation, feed them as you do these Indians, and they would hold a caucus and vote to assassinate the first one of their number who attempted to become self-supporting.

As illustrative of a point of view not frequently expressed in official reports but probably entertained by many who had been disappointed with the progress that was being made by the Indians with whom they were in contact, an extract from a report of 1885 from Captain Charles Porter, Acting Agent at Hoopa Reservation, California is presented:[44]

> After three years experience here as agent, I have no hesitation in declaring that it would be a benefit not only to the Government but to the Hoopa Indians, if this reservation were abandoned, and

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[43] Com. Ind. Aff., 1883, p. 36.

[44] Com. Ind. Aff., 1885, p. 6.

> the lands thereof homesteaded to the Indians with the usual provision against alienation. I consider as absolutely wasted the money which is being expended by the Government for the support of the reservation and for the supposed benefit of the Indians. The reservation may at one time have served some useful purpose or have been a necessity, but its day of usefulness and the necessity for it have passed. It must be apparent to everyone that the Hoopa Indians have not derived any benefit from the expenditures so liberally made for and upon their reservation. Their condition is not in any respect superior to that of the neighboring tribes who receive no aid or assistance of any character from the United States. In fact in all the manlier and better elements of character, such as self-reliance, self-support, thrift, honesty, and truthfulness, the Hoopas are sadly inferior to the neighboring Indians.
>
> Moreover, the Hoopas are not to-day any more enlightened, advanced, progressive, industrious, or better off in any way than they were when the reservation was established twenty years ago.

Between the pessimism of the views last quoted and the unwarranted optimism expressed by others, there was a viewpoint illustrated in the following statement by Commissioner Atkins in his report of 1887:[45]

> There is danger that the advocates of land in severalty will expect from the measure too immediate and pronounced success. Character, habits, and antecedents cannot be changed by an enactment. The distance between barbarism and civilization is too long to be passed over speedily. Idleness, improvidence, ignorance and superstition cannot by law be transformed into industry, thrift, intelligence and Christianity. Thus the real work yet remains to be done and can be accomplished only by persistent personal effort. In fact, the allotment act instead of being the consummation of the labors of missionaries, philanthropists, and Government agents, is rather an introduction and invitation to effort on their part, which by the fact of this new legislation may be hopeful and should be energetic. Moreover, with this new policy will arise new perplexities to be solved and new obstacles to be overcome which will tax the wisdom, patience and courage of all interested in and working for Indian advancement.

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[45] *Ibid.,* 1887, p. vi.

The writer desires to acknowledge his obligation to Mr. D. S. Otis for the privilege of consulting his unpublished manscript upon "The Dawes Act of 1887" from which a number of references in this chapter have been taken.

CHAPTER VI

ALLOTMENT PURPOSE DEFEATED BY LEASE AND SALE

1888-1909

Seventy years before the passage of the General Allotment Act of February 8, 1887 (24 Stat. 388) Congress had authorized the selection of a section of land by each chief or warrior of the Creek nation who had actually aided the United States during the War of 1812 with Great Britain and the vesting of the fee title to such lands in the heirs of the chief or warrior provided he should continue to occupy and cultivate the same until his death. In the year 1826 Secretary of War Barbour had not only definitely recommended the distribution of tribal property among the individual members of Indian tribes but had actually put the plan into practice in treaties with the Potawatomi and the Miami tribes. Nearly fifty years prior to 1887 Congress had recognized the demand for the individualization of land ownership among the Indians in the act of March 3, 1839 providing for the division of the reservation of the Brotherton Indians and, beginning with the Omaha treaty of March 16, 1854, the Commissioner of Indian Affairs, the Secretary of the Interior and the Congress had placed the stamp of approval upon an allotment policy as to various tribes. Apparently every Commissioner of Indian Affairs following Manypenny, with the exception of General Walker, definitely favored an allotment policy and in December 1878 a bill for the general allotment of Indians was introduced in Congress. For nearly a decade thereafter the question of allotment was discussed and debated in Congress, at specially arranged conferences, in public meetings and in private gatherings, usually with much earnestness, often with great warmth of feeling and, at the end of this period of discussion, the Congress passed and the President signed a bill that fundamentally rejected the theory of seclusion, so vigorously presented by General Walker in his book entitled " The Indian Question " and accepted the theory of citizenship and assimilation as the goal toward which the energies of the Government should be directed. Many believed that the two theories could be harmonized through the confinement of the Indians on reservations and the allotment of the lands within the same with the purpose of gradually bringing the Indians to the same social status as that of the whites surrounding the reservations.

In accordance with the provisions of the General Allotment Act, the Office of Indian Affairs issued appropriate instructions to its field officers and made preparations for the actual work of dividing communal lands among the individuals of various tribes, beginning with those who were considered the most advanced in civilization or were most desirous of receiving their lands in severalty. In his annual report for 1888, Commissioner John H. Oberly stated that subsequent to June 1, 1887 a total of 3,349 allotments had been made on ten reservations. The Indians upon certain reservations, including the Chippewa, Klamath, Siletz, Menominee, Sioux at Devil's Lake, the Quapaw and the Umatilla seem generally to have been desirous of allotments;[1] but many tribes opposed allotment plans.[2] The reports of Indian agents as to the desire of the Indians for allotment cannot be accepted without a slight suspicion of inaccuracy. Without questioning in the least the motives of the agents, one cannot overlook the fact that a law, providing for a general allotment and having the approval of the Indian Office, had recently been enacted. The policy of allotment had been announced formally and there would most naturally have been a tendency to interpret any indication of desire for allotment at its full value while evidences of opposition, entitled to equal consideration, may have been discounted. On the other hand those agents who had been opposed to allotment possibly reflected a somewhat stronger opposition on the part of the Indians than actually existed.

On March 4, 1889 the national administration changed again and, under President Benjamin Harrison, General Thomas Jefferson Morgan of Rhode Island, a Civil War veteran and a clergyman of some literary attainments, who had for years manifested a deep interest in the welfare of the black and red races in the United States, became Commissioner of Indian Affairs, assuming the office on June 10, 1889. In his annual report for the fiscal year ending June 30, 1889, issued in the late autumn of 1889, Commissioner Morgan expressed his approval of the allotment principle upon which the Dawes act was based. After three years in the office of Commissioner, Morgan said in his report for 1892:[3]

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[1] Com. Ind. Aff., 1888, p. xl, 208, 211, 238; 1889, p. 143; 1890, pp. 83, 207, 208; 1891, p. 317, Devil's Lake; 1892, pp. 185, 186.

[2] Com. Ind. Aff., 1888, pp. 69, 93, 99; 1889, p. 230; 1892, pp. 232, 271.

> The essential element of the policy adopted by the Government is suggested in the one phrase—American Citizenship. * * * Citizenship, accompanied by allotment of lands, necessarily looks toward the entire destruction of the tribal relation; the Indians are to be individualized and dealt with one by one and not *en masse*; they are to stand upon their own personal rights and be freed absolutely from the trammels of the tribe and the limitation of chieftaincy. * * * The agency system is doomed, and must go, and that speedily. The great work of the Indian Bureau at present is to hasten the time when its labors shall be completed, and when it shall cease to exist as a part of the machinery of the Government. * * * I appreciate that when an Indian, by virtue of his citizenship, becomes a voter he has a significance in the eye of the vote-getter, and becomes an object of solicitude to all who desire his suffrage in the promotion of their own interests.

Commissioner Morgan expressed the conviction that citizenship and the vote had brought many advantages to certain Indians but he showed great solicitation as to the effect upon other Indians, saying:[4]

> I cannot too strongly express my earnest conviction that the work of education should keep far ahead even of that of allotting lands, lest the allotment of lands and the conferring of citizenship prove not only a detriment to the Indians themselves, but, in some cases, at least, work harm to the community. I believe it entirely feasible and very desirable to modify the agency system and prepare the way for its complete abolition by placing the agency affairs, in certain cases, in the hands of school superintendents.***
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> The power of the agent in cases where land has been allotted, as, for instance, among the Sissetons, the Yanktons, the Nez Percés

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[3] Com. Ind. Aff., 1892, pp. 6, 7.

[4] Com. Ind. Aff., 1892, p. 9.

and elsewhere,— is very limited indeed. Those under him are no longer his subjects, but citizens of the United States. He cannot maintain an Indian police force or exercise any of the autocratic power to which he was accustomed when they were still merely wards of the nation.[5]

The Indian appropriation act of July 13, 1892 (27 Stat. 120) provided:

> That from and after the passage of this act the President shall detail officers of the United States Army to act as Indian agents at all agencies where vacancies from any cause may hereafter occur, who, while acting as such agents, shall be under the orders and direction of the Secretary of the Interior, except at agencies where, in the opinion of the President, the public service would be better promoted by the appointment of a civilian.

Although he had received the title of Brigadier-General during the War between the States, Morgan said of this provision:[6] "I regard the policy of substituting army officers for civilians with grave apprehension." He based his objection chiefly upon the ground of his fear of unpleasant relationships between the Departments of War and Interior, but other parts of his report disclose an apprehension that the participation of the military in the administration of Indian Affairs might lead to an encroachment upon the civil rights of the Indians. Like his predecessors Morgan was strongly of the opinion that emphasis should be placed upon the encouragement of the Indians in agricultural and domestic habits, which he believed could be effectively accomplished only under an allotment policy with civilians in charge.

Nevertheless Commissioner Morgan realized the difficulties involved in an attempt to re-cast the social and economic life of large groups of individuals and in his annual report for 1892, he discussed the "Indian Crisis" and listed four possible pitfalls: (p. 139)

> *First*, There is danger that citizenship will be thrust upon the Indian before he is prepared for it.

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[5] Morgan misinterpreted somewhat the legal effect of citizenship upon the relationship of the Indians as "wards."

[6] Com. Ind. Aff., 1892, p. 10.

Second, There is a danger that the educational system will be checked.

Third, There is danger that the Service will not be lifted out of politics.

Fourth, There is danger of Christian people failing in responsibility.

Either to silence public criticism of the allotment policy or merely to satisfy himself and others as to the success of the policy so far as it had been carried out Commissioner Morgan, in a series of letters of August 12 and 13, 1892 requested a large number of Indian Agents to present their views as to the results of allotment. Some of the agents reported favorably on the effects of allotment as a stimulus to Indian effort.[7] Others reported that the Indians were unanimously, or predominatingly, opposed to allotment,[8] or that the allotment had been made too soon.[9] The specific replies to the eight divisions of the questionaire as given by Agent J. E. Helms of Santee, Nebraska, were rather non-committal.[10] Bennett of the Five Tribes ascribed the opposition to improper motives.[11] Brown of Pine Ridge said many Indian were " clamoring for allotment " but subsequent reports from Pine Ridge did not corroborate this view.[12] There was undoubtedly a lack of unanimity of opinion in most tribes and the influence of the chiefs and leaders in council made it extremely difficult to ascertain the sentiment of the majority. In 1893 Agent Robert M. Allen of White Earth reported that the mixed-bloods desired allotments but that the full-bloods were opposed. Of the full-bloods Allen remarked: (Com. Ind. Aff. 1893, p 50)

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[7] Com. Ind. Aff., 1892, Moore for Quapaw, p. 186; Robbins for Nez Perce, p. 236; Ft. Belknap, p. 296; Matthews for Klamath, p. 413; Crawford for Umatilla, p. 419; Dixon for Crow Creek and Lower Brule, p. 443; Wright for Rosebud, 461; Cole for Colville, p. 508; Lynch for Yakima, p. 508; Brown for Pine Ridge, p. 457.

[8] Com. Ind. Aff., 1892, Hashly for Omaha and Winnebago, p. 186; Charles for Southern Ute, p. 232; Scott for Pottawatomi and Great Nemaha, p. 271; Ronan for Flathead, p. 294.

[9] Com. Ind. Aff., 1892, Ashley for Cheyenne and Arapaho, p. 188; similar reports from Sac and Fox, Puyallup, Tulalip, Green Bay and Sisseton.

[10] *Ibid.,* pp. 187, 188.

[11] *Ibid.,* p. 250.

[12] *Ibid.,* p. 457; to contrary see Com. Rep., 1896, p. 292; 1898, p. 276; 1904, p. 331.

> Aside from living in houses and wearing clothes, I cannot see wherein the full-bloods have made much advancement. They are constitutionally opposed to work and refuse to do it, and it is simply a question whether the Government will furnish them with supplies or allow them and their families to starve.

Section 8 of the General Allotment Act of 1887 had excepted from the provisions of the act the Five Civilized Tribes, the Osage, the Miami and Peoria, and the Sauk and Fox tribes of Indian Territory, the Seneca of New York and a strip of territory in Nebraska adjoining the Sioux Nation. By an act of March 2, 1889 (25 Stat. 1013) the provisions of the act of 1887 were made applicable, except as to section 6, to the Confederated Wea, Peoria, Kaskaskia, and Piankashaw tribes and to the Western Miami, which groups together constituted the United Peoria and Miami located in northeastern Indian Territory. An act of February 13, 1891 (26 Stat. 749) confirmed an agreement with the Sauk and Fox and the Iowa Indians under which they accepted allotment on substantially the basis of the General Allotment Act.

An act of January 12, 1891 (26 Stat. 712) provided for the appointment of three commissioners who should make a careful investigation of the legal status and affairs of the Mission Indians in Southern California. These commissioners were to select a reservation for each band or village and the Secretary of the Interior was authorized to issue patents to the respective bands for the lands included in the reservation of that particular band. The Secretary was also authorized to issue patents to individuals in severalty within such reservations in areas of not less than 160 acres nor more than 640 acres of grazing land and not over 20 acres of arable land to each head of a family, and not less than 80 acres of arable land and not over 640 acres of grazing land to any single person. All patents were to declare that the United States would hold the land in trust for twenty-five years. The individual patents when issued were to override the patent to the tribe in common as to the lands which they covered.

Incident to and in harmony with the policy of confining the Indians to restricted areas, known as Indian reservations, numerous Executive Orders were issued subsequent to 1850 defining the boundaries of portions of the public domain that were withdrawn from entry or sale so that such lands might be devoted to the use of designated tribes of Indians. The creation of reservations of this character was peculiarly characteristic of the vast region that was derived from Mexico as a result of the War of 1846-1848, since within such area the United States succeeded to all rights of the Mexican Government which had never recognized either a full title to the soil or even an indefeasible right of occupancy by the Indians. The attitude of Congress for many years with respect to these reservations was clearly disclosed in an act of February 20, 1893 (27 Stat. 469) restoring a part of the White Mountain Apache Reservation to the public domain. Section 5 of this act declared:

> That nothing herein contained shall be construed as recognizing title or ownership of said Indians to any part of said White Mountain Apache Indian Reservation, whether that hereby restored to the public domain or that still reserved by the Government for their use and occupancy.

Daniel M. Browning of Illinois, who became Commissioner of Indian Affairs on April 17, 1893, discussed in his report of that year the many contests regarding the title to Indian land that had arisen under the Indian homestead provisions in section 15 of the act of March 3, 1875 (18 Stat. 420), under the Indian homestead act of July 4, 1884 (23 Stat. 96), and under the fourth section of the General Allotment Act of February 8, 1887 (24 Stat. 388) as amended by the act of February 28, 1891 (27 Stat. 794). In his report for 1894 Browning considered at length the right to allotment of Indian women married to white men and the right of the children born of such marriages to allotment.[13] In discussing again in this report the subject of Indian homestead and public land allotments Browning indicated that a fruitful source of the many contests was the tendency of the Indians to leave their claims for extended periods.[14]

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[13] See acts Feb. 10, 1855 (10 Stat. 604) and Aug. 9, 1888 (25 Stat. 392), Sec. 2; also see 6 Fed. Rep. 256 and Com. Ind. Aff., 1899, p. 46.

In his annual report for 1888 (p. XXXIV) Commissioner Oberly of Illinois had urged the need of a law authorizing the leasing of Indian lands for grazing purposes, but not until February 28, 1891 (26 Stat. 794) was an act of this character passed. Section 3 of the act provided:

> That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or other disability, any allottee under the provisions of said act, or any other act or treaty, can not personally and with benefit to himself occupy or improve his allotment or any part thereof, the same may be leased upon such terms, regulations, and conditions as shall be prescribed by such Secretary, for a term not exceeding three years for farming or grazing, or ten years for mining purposes; *Provided,* That where lands are occupied by Indians who have bought and paid for the same, and which lands are not needed for farming or agricultural purposes, and are not desired for individual allotments, the same may be leased by authority of the council speaking for such Indians, for a period not to exceed five years for grazing or ten years for mining purposes, in such quantities and upon such terms and conditions as the agent in charge of such reservation may recommend, subject to the approval of the Secretary of the Interior.

The evils of the leasing system, especially as to farm lands, developed almost immediately after the passage of the act of February 28, 1891. In his report for 1892 Agent Hashly of the Omaha and Winnebago agency declared that ninety per cent of the Indians of his jurisdiction had leased all or a part of their lands and that there was a tendency to stop farming and "eke out an existence" from rentals.[15] Not only were there Indians, neither aged nor disabled, who desired to lease their lands; but there were whites who desired the opportunity to farm the agricultural lands of the Indians or to engage in mining or other business and by an act of August 15, 1894 (28 Stat. 305) the words " or inability " were inserted after " disability " in the act of 1891 and the term for which allotments might be leased was extended to five years for " farming and grazing," and leases for ten years were authorized for " business purposes " as well as for mining. Efforts to prevent indiscriminate leasing resulted in great confusion and conflict at the Omaha and Winnebago Agency and doubtless at other agencies.[16]

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[14] In this connection see complaint in Com. Morgan's Rep. for 1889. That acts of Mar. 3, 1875 (18 Stat. 449) and Mar. 3, 1877 (19 Stat. 293) generally limiting the issue of rations for one week only took the Indians away from their homes too much, citing the long distances traveled at Uintah. Obviously the Indians were too much disposed to leave their allotments for long periods without the encouragement of unwise laws and regulations.

[15] Com. Ind. Aff., 1892, p. 186.

The Indian Service experienced such difficulties in administering the leasing act and there developed so much criticism that by an act of June 7, 1897 (30 Stat. 85) Congress again amended the law by striking out the words " or inability " that had been inserted by the act of 1894 and by limiting the lease period for " farming and grazing " to three years as in the original act of 1891. The act of 1897 also reduced the period of leases for " mining and business purposes " to a maximum of five years.[17] But the legislative tinkering did not end here. Another act of May 31, 1900 (31 Stat. 229) restored the word " inability " and extended the term to five years where the lands were leased for " farming purposes only." The period authorized for mining and business purposes remained at a maximum of five years, while leases for grazing were still limited to a maximum period of three years. On the subject of the leasing of allotments, as on so many matters of Indian policy, Congress was evidently " feeling its way " and exhibiting much indecision.

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[16] *Ibid.*, 1895, p. 37.

[17] See act June 7, 1897 (30 Stat. 72) allowing Quapaw allottees to lease lands for not over three years for farming and grazing, or ten years for business purposes, if the allottees were incapacitated by age or disability. In Com. Ind. Aff., 1897, p. 134, Agent Doane said the Quapaw act was very unwise from the standpoint of the welfare of the Indians. See act Mar. 1, 1899 (30 Stat. 941) permitting five year leases for agricultural purposes on allotted lands of the Yakima Reservation; and act of May 3, 1900 (31 Stat. 229) authorizing the leasing of unimproved allotted lands on the Yakima for ten year periods for agricultural purposes. The Yakima acts authorized the Secretary of the Interior to prescribe rules and regulations as to leasing but did not contain the provision that it must be made to appear to the Secretary that because of " age, disability, or inability " the allottee could not with benefit to himself occupy or improve his own land.

The various acts of general application all imposed upon the Secretary of the Interior the responsibility of determining who should be allowed to lease by reason of age, disability, or inability to occupy or improve his own land. Through experience in administration, regulations were developed that were calculated to restrict as much as possible the faults inherent in a system that offered thousands of opportunities for evasion of the fundamental purposes of the legislation. The regulations quoted below indicate that a very sincere and intelligent effort was made by the Indian Service and the Department of the Interior to assist the aged and disabled and to discourage the leasing of their lands by those capable of using them. These regulations read in part as follows:[18]

> 1. The term 'age' is defined to apply to all persons under 18 and all persons disabled by reason of old age.
>
> 2. The term "disability" is defined to apply to—
>
>   (a) All unmarried women
>
>   (b) All widows who have no sons of suitable age under their control to cultivate their lands with profit.
>
>   (c) All married women whose husbands or sons are not in condition to cultivate their lands with profit to the family.
>
>   (d) All allottees who are disabled by reason of chronic sickness or incurable physical defects.
>
>   (e) All allottees who are disabled by native defect of mind or permanent incurable mental disease such as to prevent them from cultivating their lands.
>
> 3. The term 'inability,' as used in said amended act, can not be specifically defined as the other terms have been. Any allottee not embraced in any of the foregoing classes who, for any reason other than those stated, is unable to cultivate his lands or a portion of them, and desires to lease the same, may make application therefor to the proper Indian agent. If his inability to cultivate his lands (or the portion thereof he desires to lease) is clearly shown in the reasons assigned, the allottee may be permitted to lease. In submitting such leases the agent must state in brief, concise terms the cause of such inability.

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[18] Ind. Of. Reg., April 1, 1904, p. 109; Leasing Reg. app. Mar 16, 1905.

4. Every adult male able-bodied Indian not engaged in some permanent business or occupation by which he is gaining a livelihood for himself and family will be required to reserve not less than 40 acres of cultivable land from his own allotment for occupancy and cultivation by himself, which shall always be exempt from leasing.

Adult male Indians not wholly disqualified by physical or mental infirmities from working a portion of their allotments, but who may be less able than those not so disqualified, will be required to work or manage a part of their allotments, to be regulated and determined by the actual conditions in each case, to be fully and conclusively shown in the applications for permission to lease.

In both of the last-mentioned cases the allottees will be permitted to receive a portion or percentage of their lease money from that portion of their allotments that may be leased, the remainder to be retained until the expiration of the lease period, whenever, in the discretion of the agent, such action will not work a hardship to the allottee.

These requirements are not applicable to the several classes named in section 2.

5. Indian agents, however, are hereby expressly directed that it is not intended by the terms 'disability' and 'inability' to authorize the making of any lease by an allottee who has the necessary physical and mental qualifications to enable him to cultivate his own land, either personally, through the aid of his minor children, or by hired help, unless for exceptional reasons, which must be clearly shown, he falls within the provisions of Rule 3.

By a decision of January 11, 1892 [19] the Assistant Attorney General for the Interior Department held that the use of the words " bought and paid for " in the act of February 28, 1891 restricted the leasing of tribal lands to those reservations which the Indians had acquired by purchase or by the exchange or surrender of other property. This interpretation excluded from the operation of the act all unallotted lands on reservations that had been established by Executive Order, comprising millions of acres. As there was urgent need for the utilization of forage that could not be used by the Indians on Executive Order reservations, the Indian Service, with the approval of the Department and the tacit approval of Congress, adopted the practice of issuing revocable permits for the use of grazing lands on such reservations under the general supervisory authority conferred upon the Secretary of the Interior by the act of March 3, 1849 (9 Stat. 395; U. S. Rev. St. Sec. 441) establishing the Interior Department.

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[19] Com. Ind. Aff., 1892, p. 71; Reg. Ind. Of., April 1, 1904, p. 114.

When William A. Jones of Wisconsin became Commissioner of Indian Affairs on May 3, 1897 the general allotment act had been in effect for ten years and millions of acres had been allotted, yet discussion, as to the desirability of a distribution of lands in severalty to the Indians and as to the effect upon those who received allotments, had not subsided. In fact there was a resurgence of opposition on the part of some of the Indians, as well as from many whites familiar with Indian Affairs. Some of the opposition among whites came from those who were primarily interested in the welfare of the Indians, some of it came from large cattlemen and sheep owners who felt that allotment was but a preliminary step to the fencing of choice areas and the division of the range into relatively small areas, with private ownership of water facilities and other irksome or fatal restrictions upon a profitable use of the range for grazing operations on an extensive scale. Jones was an advocate of allotment, as shown by the statements in his report for 1899 (p. 6) that: " The advantage and necessity of taking their lands in severalty is impressed upon the pupils in the schools," and that: (p. 7) " The entire educational system of the Indian Office is therefore predicated upon the final abolishment of the anomalous Indian reservation system."

In a report of 1896 to Commissioner Browning, Captain W. H. Clapp, Acting Indian Agent at Pine Ridge had said: (p. 292, Com. Rep.)

> No allotments of land in severalty have been made on this reservation, and none should in the future be made, because the raising of cattle being the only practicable industry, the land must remain unfenced to afford adequate range. Were the land allotted, and such as remained opened to settlement, white men would monopolize the range, and the only industry now possible for the Indian would be hopelessly ruined.[20]

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[20] Cf. Com. Ind. Aff., 1896, p. 298, letter of Agent Chas. E. McChesney of Rosebud, directly adjacent to Pine Ridge, saying allotment was proceeding,

Agent Joseph T. Carter reported in 1897 that the Flatheads were still much opposed to allotment, and in 1898 Agent Scobey at Fort Peck wrote that the sentiment in favor of allotment was not as strong as it had been several years before.[21] However Lieutenant V. E. Stottler, Acting Agent at Mescalero, recommended allotment as affording the only assurance of a permanent holding of the land by the Indians, saying 340 acres had recently been patented on Three Rivers in the northwest part of the reservation.[22] Agent Joseph Emery of Klamath, where 775 allotments had been made, indicated full confidence in the allotment plan.[23] The following year Agent Lynch of Yakima said the Indians were asking for allotment,[24] and in 1899 Agent Luke C. Hays of Fort Belknap reported that the Indians were generally living on ranches of from 20 to 30 acres with fair log houses and farming implements.[25]

While some of these reports were reassuring as to the success of the allotment plan, others certainly gave cause for alarm. In 1897 Agent Beal Gaither referred to the confusion that existed at Siletz because of the inheritance of allotments;[26] and the annual report of 1899 from Agent Charles P. Mathewson of the Omaha and Winnebago Agency discussed a most remarkable situation. An act of February 21, 1863 (12 Stat. 658) providing for the removal of the Winnebago from their reservation at Blue Earth River, Minnesota, to lands to be selected "beyond the limits of any existing State," had authorized the allotment of 80 acres to each head of a family and a larger amount to chiefs, the title to which should vest in the allottee and his heirs without the right of alienation, which title was to be evidenced by a patent. Lands were selected at Usher's landing on the Missouri River upon or near the lands later embraced within the Crow Creek Reservation, but the Winnebago did not find life among the Sioux agreeable and a large number

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but some Indians, under the influence of the chiefs, were still opposed. See also McChesney's report that allotment was advantageous to Rosebud Indians in Com. Jones' Rep., 1897, p. 275; and Clapp to contrary, p. 276.

[21] Com. Ind. Aff., 1897, p. 166; 1899, p. 225.

[22] *Ibid.*, 1897, p. 192.

[23] *Ibid.*, 1897, p. 252.

[24] *Ibid.*, 1898, p. 304.

[25] *Ibid.*, p. 221.

[26] *Ibid.*, 1897, p. 254.

of them soon emigrated to the Omaha country in Nebraska. In furtherance of this plan of removal a treaty of March 8, 1865 (14 Stat. 671) authorized an exchange of the Winnebago lands in Dakota for a part of the Omaha Reservation that had been ceded to the United States on March 6, 1865 (14 Stat. 667). Under authority of the act of February 21, 1863 allotments were made to 420 Winnebago on their reservation in Nebraska. The treaty of March 6, 1865 with the Omaha had provided for the assignment of 160 acres of land to each head of a family and 40 acres to each male person 18 years of age or upward, without family. Under this act a large number of assignments were made for which certificates, but not patents, were issued. An act of August 7, 1882 (23 Stat. 342) was directed to the furnishing of a more secure title to the Omaha. It provided for the issuance of trust patents to them. A new allotment was arranged for the Winnebago under the general allotment act of February 8, 1887 (24 Stat. 388). Referring to the re-allotment of these Indians Agent Mathewson said:[27]

> Investigation developed the fact that only about one-half of the original allottees could be found or identified. This was owing to the fact that English names were arbitrarily given them at the time of the first allotment and the failure to retain the English names also. As a result the allotting agent returned over 200 patents which had been recovered and which were finally cancelled as being fictitious. As a result of this confusion something over 250 allottees have thus far failed to receive their allotments in whole or in part. This condition has caused much feeling and discontent.

Fifteen years earlier the Omaha had been cited as affording a conspicuous example of the benefits of allotment, yet Mathewson reported in 1899 that many of the 130 houses that had been built for the Indians 30 years before were sadly in need of repair and that the identity of one half of the former allottees could not be established. A similar report was received from Agent Lynch of Yakima as to the difficulty of ascertaining to whom the 1818 trust patents sent to him in 1899 should be delivered.[28]

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[27] *Ibid.*, 1899, p. 231.

[28] Com. Ind. Aff., 1899, p. 363; cf. Com. Ind. Aff., 1904, p. 249, regarding Jicarilla allotment.

Many Indians did not know under what name they had been allotted, especially those whose relatives, since deceased, had selected their allotments for them. Certainly the earlier reports as to the avidity with which the allottees had adopted the agricultural mode of life laid out for them and their capacity for the occupancy and use of individual tracts had been decidedly over-enthusiastic.[29]

In 1899 the Board of Indian Commissioners sought to learn through means of a circular letter the views of the agents of those reservations where the making of allotments had been carried out to any great extent. Commenting on the results of the questionaire, the Secretary of the Board, Dr. Merrill E. Gates, formerly President of Amherst College, stated that the 28 replies received were generally favorable to allotment.[30] He thought this surprising in view of the fact that a large number of the agents had felt ten years earlier that it would be impracticable to induce the Indians to live on their allotments and support themselves and their families with agriculture. The report expressed a very positive conviction as to the faults of the closed reservation plan of dealing with Indians. The Board advocated dealing with the individual rather than with the tribe, allotment of lands, education by work where possible, elevation of the idea of the family, encouragement of contact of the Indian with civilized white men, making the Indian amenable to the white man's law, and constant efforts to spread Christian influences. The report discussed the lack of permanent individual and family records at most Indian agencies from which had resulted great confusion as to identity of allottees and as to heirship. The Board favored the distribution of tribal funds to individuals and the placing of the Indians under the laws of the States and Territories out of "paternal" federal control, and declared:[31]

> For this reason our Board has never favored elaborate codes of special law for Indians. * * * Our Board is recommending addi-

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[29] *Ibid.*, 1884, pp. 1, 38, 118; 1885, p. 135; 1886, p. xx; Board Ind. Com., 1887, p. 25.

[30] 31st Ann. Rep. printed with Rep. Com. Ind. Aff., 1899, II, pp. 221 *et seq.*

[31] *Ibid.*, p. 238.

tional machinery in the Indian Service, *only in order to hasten the period at which all special laws for, and all special administration of Indian Affairs, may come to an end.*

Immediately after the passage of the general allotment act of February 8, 1887, consideration was given to the making of arrangements under which some of the large tribes and groups of Indians should be restricted to smaller reservations on which they might be allotted and the surplus lands opened to settlement by the rapidly increasing white population. An act of January 14, 1889 (25 Stat. 642) entitled, " An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," and generally known as the " Nelson Act " after Senator Nelson of Minnesota, provided for a commisison to negotiate with all the bands and tribes of Chippewa in Minnesota for the cession of all their lands in that State except the White Earth and Red Lake Reservations and to so much of these two reservations as, in the judgment of the commissioners was not required to provide allotments for the members of the Minnesota tribes. The act was to become effective as to all reservations except the Red Lake upon the consent in writing of two-thirds of the adult males over eighteen years of age in the band occupying a reservation and as to the Red Lake upon the written consent of two-thirds of the male adults of all the Chippewa Indians in Minnesota. The Red Lake Indians were to be allotted on the Red Lake Reservation and all others on the White Earth Reservation under the provisions of the general allotment act of February 8, 1887.

No Chippewa of Minnesota was to be deprived of an allotment already made without his consent and any Indian might, in his discretion, take his allotment upon the reservation where he was living at the time of the removal of his tribe or band. The ceded lands were to be surveyed and classified by forty acre tracts into " pine lands " and " agricultural lands." The pine lands were to be sold in forty acre tracts at public auction at not less than the appraised price and the agricultural lands were to be opened to entry under the homestead laws at a price of $1.25 per acre. All moneys derived from the sale or entry of lands were to be deposited in the Treasury of the United

States to the credit of all the Chippewa of Minnesota and draw interest at the rate of five per cent per annum for a period of fifty years after the allotments provided for in the act should have been made. The act provided that three-fourths of the interest should be distributed annually in per capita payments, under two classifications, and one-fourth should be used for educational purposes. At the end of the said fiftieth year the principal of the fund was to be distributed in equal shares to all enrolled Minnesota Chippewa then living. Most of the Minnesota Chippewa were given allotments under this act.[32]

An act of March 2, 1889 (25 Stat. 888) provided for the division of a portion of the extensive Sioux Reservation in Dakota Territory into separate reservations, the relinquishment of the Indian title to an immense area, and the making of allotments to the Indians upon the diminished reservations created by the act, which were the Pine Ridge, Rosebud, Standing Rock, Cheyenne River, Lower Brule, and Crow Creek Reservations. Provision was also made for the Flandreau Sioux, and for the Santee Sioux in Nebraska. The Ponca Indians occupying lands within the Great Sioux Reservation were also cared for. The act authorized the President, whenever he should consider such action advisable, to arrange for allotments of 320 acres to each head of a family, 160 acres to each single person over 18 years of age and to each orphan under 18 years, and 80 acres to each other person under 18 years of age. It was also provided that where the land of a reservation was mainly valuable for grazing purposes, additional portions in the quantities stated above should be given to each Indian. The act contained the unusual provision that any two or more Indians, entitled to allotment, might, upon agreement, receive the grazing lands to which they were entitled in a single tract, "to be held and used in common." The allotments were to be held in trust for a period of twenty-five years. The act authorized the release, at a later period with the consent of the

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[32] See House Exec. Doc. No. 247, 51st Cong. 1st Sess.; Act June 27, 1902 (32 Stat. 402); Act Mar. 3, 1903 (32 Stat. 1009); Act Feb. 20, 1904 (33 Stat. 46); Act Apr. 28, 1904 (33 Stat. 539); Act May 23, 1908 (35 Stat. 268) National Forest; Act June 21, 1906 (34 Stat. 353).

Indians, of lands not needed for allotment within the reservations thus established, but agricultural lands thus released were to be disposed of to bona fide settlers in tracts not exceeding 160 acres.

An agreement for the cession of lands by the Gros Ventre, Piegan Blood, Blackfeet, and River Crow of Montana was ratified by an act of May 1, 1888 (25 Stat. 113) and a similar one with the Shoshone and Bannock Indians of Idaho by an act of September 1, 1888 (25 Stat. 452). On July 1, 1892 (27 Stat. 62) the north half of the Colville Reservation in Washington, which had been established by Executive Order of July 2, 1872 was restored to the public domain and opened to settlement, with a reservation of the tracts desired for allotment by Colville Indians then residing within the area thus restored to entry. During the decade from 1890 to 1900 cessions of less importance were made by various tribes.[33]

In his annual report for the fiscal year 1900, Commissioner Jones listed three obstacles to the progress of the Indian toward independence and self-support; namely rations, annuities, and leases. He said $1,231,000 had been expended during the year by the government for subsistence in the form of rations and denounced the system in strong terms. He said: "It encourages idleness and destroys labor; it promotes beggary and suppresses independence; it perpetuates pauperism and stifles industry; it is an effectual barrier to the progress of the Indian toward civilization." Jones referred to the leasing law as "vicious legislation" and declared that over one and one-half million dollars distributed as annuity payments and substantial sums received from the leasing of land had not seemed to produce helpful results.

The report of Commissioner Jones for 1901 discussed at considerable length Indian educational policies and practices and the relationship of the same to land ownership and to other phases of Indian life. He said: (p. 6)

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[33] Acts Oct. 1, 1890 (26 Stat. 658) Round Valley; Mar. 3, 1891 (26 Stat. 989) App. act, Pottawatomi, Shawnee, Cheyenne and Arapaho, Coeur d'Alene, Ft. Berthold, Sisseton and Wahpeton and Crows all ceded land. June 17 1892 (27 Stat. 52); Feb. 20, 1893 (27 Stat. 469) White Mt. Apache; Mar. 3, 1893 (27 Stat. 612) Cherokee, Pawnee; Aug. 15, 1894 (26 Stat. 286) Yakima, Siletz, Nez Perce, Yuma.

> But whatever the condition of the Indian may be, he should be removed from a state of dependence to one of independence, and the only way to do this is to take away those things that encourage him to lead an idle life, and, after giving him a fair start, leave him to take care of himself. To that it must come in the end and the sooner steps are taken to bring it about the better. That there will be many failures and much suffering is inevitable in the very nature of things, for it is only by sacrifice and suffering that the heights of civilization are reached.

In discussing past practices and policies and especially the establishment and maintenance of the reservation system, Jones said: " There appeared no middle ground between surveillance and extermination, and the former was adopted as a fixed policy, which has continued to the present time. The vicious ration and annuity system was its logical corollary." Jones believed that the time had come for the abandonment of the ration and annuity practices and of the reservation policy so far as practicable. He did not hesitate to announce his convictions in unequivocal terms, declaring: (p. 10) During the past four years the endeavor of this Office has been to crystallize the newer policy of abandoning the reservation system of Indian government wherever practicable." Again Jones said: (p. 12)

> The Indians cannot be made an integral part of the body politic or be fitted for citizenship by herding them on limited areas, with a separate government, and feeding them in idleness; but they can be thus advanced by giving the children industrial training, breaking up their reservations, and throwing them upon their own resources among white people.
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> The Pamunkey Indian segragated from the people surrounding him [still on an 800 acre reservation in Virginia in 1901] has remained a Pamunky Indian for three hundred years; but, on the other hand, the Iowa Indian of the Great Nemaha Reservation in Kansas has in several generations, under the processes outlined, reached that state where he is absorbed and assimilated by the surrounding white people.

In a report of August 29, 1901 to Commissioner Jones, E. A. Allen, superintendent in charge of the Quapaw Agency, with headquarters at Seneca School, Wyandotte, Ind. Terr., said: (p. 217)

> Many of these people were citizens in good standing more than a generation ago, but at the invitation of the Government, gave up that proud distinction, removed to the 'Territory,' and became again wards of the United States. There is not an Indian within the bounds of this agency, though many are not enlightened, who will become better fitted for independent living than he now is until all distinction between him and other American citizens, except perhaps in the right to dispose of his land, is removed.
>
> The status of the Indians in this locality is very much better than that of most white people in the same community, and as there are three of the latter to every one of the former, the white problem here will readily be seen to surpass the Indian problem in importance. To ameliorate the grave condition of the whites, recommendation has been made that appropriation be asked for from Congress for public schools open to both white and Indian children, to be supported by the General Government only until such time as a Territory or State is organized, when they should be turned over to it.

On the first page of his report for 1902, Commissioner Jones again took up the subject of rations, referring to the stand taken in previous reports, he said:

> And here, it is proper to say that this change in the manner of dealing with the Indians was not a hasty conception on the part of the Office. Indeed, it was not new at all. It has been the hope and desire of enlightened men for many years. But inasmuch as it has been the subject of harsh criticism and severe condemnation, and as the Indian Office has been freely charged with ignorance and blunders, it is simply fair that the motives which governed it and the principles which actuated it should be known and understood in order that the public may form an intelligent judgment on the matters involved. For this purpose it is necessary to go over some familiar ground and give it a somewhat extended notice.

Jones said that the current movement arose about two years before and was precipitated by a communication from chiefs and headmen of the Sioux complaining that their rations had been cut down from what was agreed in the Black Hills treaty of 1876. Believing that this petition of the Rosebud Sioux to the President, represented the feeling of the Sioux people generally, very thorough and fundamental consideration was given to the whole subject of rations and of the agreements in the Sioux treaty. Article 4 of that treaty contemplated the removal of the Sioux to Indian Territory and their location in an area where they could become self-supporting. A removal within one year was contemplated. Article 5 provided, that in consideration of the cession of lands made by the treaty and full compliance with all obligations assumed by the Indians, the United States would furnish schools and other necessary aid, including " subsistence consisting of a ration for each individual of a pound and a half of beef (or in lieu thereof, one-half pound of bacon), one-half pound of flour, and one-half pound of corn; and for every one hundred rations, 4 pounds of coffee, 8 pounds of sugar, and 3 pounds of beans, or in lieu of said articles the equivalent thereof, in the discretion of the Commissioner of Indian Affairs." Such rations, or so much thereof as may be necessary, shall be continued until the Indians are able to support themselves."

Other parts of the treaty showed that it was the purpose of the Government to provide rations only so far as the Indians were unable to provide for themselves, and that it was contemplated that the Indians would perform labor and make themselves self-supporting so far as practicable. Commissioner Jones pointed out that nearly ten years prior to 1900, Commissioner Morgan, in writing to the Secretary of the Interior, quoted articles 4 and 5 of the treaty and vigorously supported the view that the Sioux were, under the terms of the treaty, to be furnished rations only as an aid, supplementary to their own efforts and maintained that it never had been the policy of the Government to feed them indefinitely. Morgan especially pointed out that paragraph of Section 5 of the treaty reading:

> Whenever the said Indians shall be located upon lands which are suitable for cultivation, rations shall be issued only to the persons and families of those persons who labor (the aged, sick, and infirm excepted); and as an incentive to industrious habits the Commissioner of Indian Affairs may provide that such persons be furnished in payment for their labor such other necessary articles as are requisite for civilized life.

Commissioner Jones remarked that within the thirty-three years preceding the date of his report nearly $60,000,000 had been appropriated for the benefit of the Sioux along the lines described. He said that under date of June 20, 1901 very definite instructions were given to all Sioux agents to erase from the ration rolls those that did not need such aid and to regulate the ration issued to others in accordance with their needs, instead of giving the same ration to all, as had been the custom. The letter was not sent to the agent of the Santee Sioux. In September, 1901 a similar letter was sent to all other ration agencies, so that by the autumn of 1901 all ration agencies were on the same basis with respect to withholding of rations from those able to support themselves. For thirty years the Sioux had not only received rations but annually a suit of clothes or cloth to make one, and other gratuities.

Early in January 1902 agents were advised that rations would no longer be issued to the able bodied, but that the money saved through the withholding of rations would be used to pay such Indians in cash for labor in building roads, dams, or reservoirs for storage of water or other work, at the rate of $1.25 per man for an eight-hour day and $2.50 for a man and team. The instructions emphasized the idea that an Indian agency should be a center for the employment of Indians rather than one for the gratuitous distribution of supplies.

It appears from the Jones statement that the report had been spread that the Indian Bureau was encouraging plans for the hiring out of Indians as contract laborers, and he repelled the suggestion vigorously, saying that agents were merely instructed to circulate information in the country surrounding the reservations that laborers could be obtained at their agencies. There was no thought of coercion. The Indian was merely to be given the opportunity to work. If he refused such opportunity, he was not to expect to be supported by the Government. The new policy was received with much discontent, mutterings, talk about vested rights and an occasional prophecy of an "uprising." The Office persevered and Jones said the result had been beyond expectation.

As a first result of the new ration policy, over 12,000 persons were dropped from the ration roll. As a second result a large number of Indians were put to work, or work was found for them. One agent reported that a man over 50 years of age, when drawing his pay for a few days work, acknowledged it was the first money he had ever earned, and seemed pleased that it was possible to secure money without waiting for annuity or lease payments. Another said he could have secured employment for practically all able-bodied Indians at his agency, if they would have taken it. A superintendent with thirty years' experience wrote the Commissioner that any time within the preceding twenty years he would have hailed the policy of discontinuing the gratuitous issue of rations as a boon to the Indians. It seems perfectly clear that the new policy was not premature,

In discussing Education at the beginning of his report for 1903, Commissioner Jones declared:

> There are only two phases of the Indian question: One, that the American Indian shall remain in the country as a survival of the aboriginal inhabitants, a study for the ethnologist, a toy for the tourist, a vagrant at the mercy of the state, and a continual pensioner upon the bounty of the people; the other, that he shall be educated to work, live, and act as a reputable, moral citizen, and thus become a self-supporting, useful member of society. * * *
>
> To educate the Indian in the ways of civilized life, therefore, is to preserve him from extinction, not as an Indian, but as a human being. As a separate entity he cannot exist encysted, as it were, in the body of this great nation. The pressure for land must diminish his reservations to areas within which he can utilize the acres allotted to him, so that the balance may become homes for white farmers who require them. To educate the Indian is to prepare him for the abolishment of tribal relations, to take his land in severalty, and in the sweat of his brow and by the toil of his hands to carve out, as his white brother has done, a home for himself and family. * * *
>
> It is folly to educate an Indian and then pension him. Government schools teach him to work and the dignity of labor. An Indian who works is always as welcome as any other man in any community. The Indian who is shiftless, a drunkard, and a loafer is ever an undesirable element, but an Indian who can contribute to the wealth, the honor, and integrity of his neighborhood is always gladly received in it.

As a result of the death of allottees the amount of Indian land held by heirs had assumed large proportions by the year 1900. Thousands of these heirs already held allotments in their own names which they were not cultivating. Many of them lacked capital for the development of their allotments; others were incapable of using the inherited lands because of immature age, old age, or other disability. In many instances the inherited lands were not susceptible of partition and it appeared that the only way to insure the productive use of such lands, to secure the funds needed for the development of other land holdings, to provide the comforts of life for aged people, or to obtain funds for special educational or medical services was to authorize the sale of inherited lands. Accordingly by act of May 27, 1902 (32 Stat. 245, 275) Congress provided that, with the approval of the Secretary of the Interior, the adult heirs of any deceased Indian to whom a trust or other patent containing restrictions upon alienation had been or should be issued might sell the inherited allotment.[34] The inherited interests of minor heirs could be sold only by a guardian duly appointed by the proper court and upon the order of such court. The title acquired through the purchase of such land was to be as complete as if a final patent without restriction upon alienation had been issued to the allottee. All allotted lands so alienated were made subject to taxation under the laws of the State or Territory in which they were situated. Departmental regulations to govern such sales were approved October 4, 1902.[35]

In his annual report for 1903 Commissioner Jones said; (p. 47) that prior to September 15, 1903 there had been received from sales of inherited lands under this act $737,173.25, or an average of $17.01 per acre. Jones apparently considered such sales highly beneficial in most instances, but very discreetly remarked: " It is questionable whether or not the sale of land inherited by minors should generally be permitted." He referred to the fact that the trust relationship required great care with respect to the funds of minors and commented that realty afforded about the safest place that trust funds could be invested. His annual report for 1904 (p. 62) disclosed that the funds derived from sales of Indian lands were soon dissipated in many instances and Jones discussed plans for receiving the payment in instalments, or of depositing the receipts in trust with an agreement by the Indians entitled to the funds that only ten dollars a month might be withdrawn.

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[34] Cf. Kaw act, July 1, 1902 (32 Stat. 636).

[35] Amended, Sept. 18, 1903; Nov. 5, 1903; Mar. 21, 1905; Sept. 19, 1907.

Francis E. Leupp became Commissioner of Indian Affairs on December 7, 1904. He had been selected under the impulse of the reform movement initiated by President Theodore Roosevelt. In his first annual report, issued September 30, 1905, Leupp argued boldly for the placing of a greater responsibility upon the Indians. He approached the subject from a widely different standpoint than Commissioner Jones, yet he echoed the thought expressed by Jones in 1901 when he said: (p. 7)

> Perhaps in the course of merging this hardly used race into our body politic, many individuals, unable to keep up the pace, may fall by the wayside and be trodden underfoot. Deeply as we deplore this possibility, we must not let it blind us to our duty to the race as a whole. It is one of the cruel incidents of all civilization in large masses that some, perhaps a multitude, of its subjects will be lost in the process.

Apparently Leupp considered the sale of inherited land under the act of May 27, 1902 as desirable or unavoidable, reporting (p. 60) that the first sale was approved on March 4, 1903 and that between that date and June 30, 1904 the funds derived from such sales amounted to $2,057,464.50, and to an average price of $16.83 per acre. A report of August 26, 1905 from Agent Samuel Bellew to the Commissioner stated that nearly all the Flatheads had at last withdrawn their opposition to allotment and were eagerly seeking to select the best lands on the reservation, often with considerable attendant controversy among themselves.[36]

In his report for 1906 Commissioner Leupp claimed for the Fifty-ninth Congress, which ended its last session on June 30,

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[36] Com. Ind. Aff., 1905, p. 241; cf. p. 338 for decline of opposition at Pine Ridge.

1906, the distinction of having surpassed all previous Congresses in the amount of legislation of vital importance to the Indians, and the whites most closely associated with them, that had been passed. This appraisal may fairly be discounted somewhat because of the deep personal interest that Commissioner Leupp had felt in the legislation enacted. Taking first place in Leupp's list of important legislation was the act of May 8, 1906 (34 Stat. 182) which had been sponsored by Representative Charles H. Burke of South Dakota, a State having an Indian population of nearly 20,000 persons in a total population of approximately 500,000.

The general allotment act of February 8, 1887 had been modified by an act of February 28, 1891 (26 Stat. 794). This amendment provided that the unit of allotment should be one-eighth of a section, or eighty acres, in all cases where there was sufficient land on a reservation to give this amount to each individual, except where some previous law or agreement with the Indians provided for allotment to certain classes in a quantity in excess of eighty acres. The act of 1891 required a prorating of the acreage if the total were insufficient to give each individual eighty acres and required compliance with the provisions of any special act or treaty as to larger allotments for certain classes, but provided that all other Indians belonging on a reservation should receive eighty acre allotments. This change in the allotment act was directed largely to a protection of the interests of wives who might find themselves without the means of support, and possibly burdened with the care of several children, if the entire allotment of one hundred sixty acres of land were made to the husband as the head of the family, as specified in the act of 1887. The amendment also provided: " That when the lands allotted, or any legal subdivision thereof, are only valuable for grazing purposes, such lands shall be allotted in double quantities." This provision cut in half the extra amount of grazing land that might be allotted to a head of a family and doubled the amount that might be allotted to a person under 18 years of age, as provided in the act of 1887. The amendment also provided for a flexible system under which an allottee might be given forty acres of agricultural land and also eighty acres of grazing land, or a total allottment of 120 acres. Section two of the act authorized the allotment of an additional forty acres to a person under 18 years of age where allotment had already been made under the act of 1887 and there was sufficient unallotted land to permit such equalization of areas. Section three of the act of 1891 authorized the leasing of Indian lands, as described above. Section four relieved Indians from paying fees for the entry of public lands, and section five dealt with the rights of descendants of Indian custom marriages.

Under the act of 1887 and the amendment of 1891 nearly fifty thousand allotments had been made during the twenty years following the year 1886. To the large number of Indians upon whom the act of 1887 had conferred immediate citizenship, there were being added annually hundreds of others who were unquestionably incompetent of assuming all the responsibilities of citizenship. The act of May 27, 1902 authorizing the sale of the land of deceased allottees had given rise to conflicting decisions because of the provisions in the allotment act of 1887 making the Indians citizens and their allotments subject to the laws of descent in the various States and Territories. A chaotic condition was threatened.[87]

The Burke act of May 8, 1906 modified section six of the act of 1887 so as to defer citizenship to the close of the trust period, or until an allottee should receive his patent in fee, as to all allotments made after the date of the act. The act also made all Indians who should be allotted subsequent to May 8, 1906 subject to the exclusive jurisdiction of the United States until they should acquire citizenship. However, the act authorized the Secretary of the Interior, in his discretion to issue a fee patent to any allottee whenever the Secretary should be convinced that such allotee was competent and capable of managing his or her own affairs. This act also directed the issuance of a patent in fee simple to the heirs of an Indian who should die before the expiration of the trust period under which an allotment was held, or the sale of the allotment and the issuance of a fee patent direct to the purchaser. It also made the decision of the Secretary final as to the determination of the heirs in such a case. In his enthusiasm over this legislation, Commissioner Leupp said in his report for 1906: (p. 30)

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[87] On April 10, 1905 the Supreme Court of the United States decided that one could not be prosecuted for selling intoxicants to a citizen Indian when outside of reservation lands (In re Heff, 197 U. S. 488).

> The legislation of recent years shows conclusively that the country is demanding an end of the Indian question, and it is right. The Burke law, wisely administered, will accomplish more in this direction than any other single factor developed in a generation of progress. When it is supplemented by other legislation which will enable their pro rata shares of the tribal moneys to be paid, principal and interest, to competent Indians, the beginning of the end will be at hand. Such Indians, owning their land in fee, and receiving their portions of the tribal property without restriction, can not by any course of action maintain a claim for further consideration. Thru such measures the grand total of the nation's wards will be diminished daily and at a growing ratio.

In the same report Leupp argued for legislative authority which would allow the Secreatry of the Interior to determine the amount of land to be allotted to individuals on different reservations. He believed that in some instances five or ten acres of irrigable land was sufficient, while on others such as the Jicarilla in New Mexico or the Blackfeet in Montana an allotment of one hundred sixty acres of grazing land was quite insufficient for the earning of a living. He suggested that the Secretary's discretion be limited to not less than five nor more than forty acres of irrigable land and not over six hundred forty acres of grazing land to each Indian.

As the years passed it became ever more apparent that those who framed the General Allotment Act of 1887 had failed to foresee many of the conditions that were to arise as a result of the allotment policy, notwithstanding the years of experimentation that had preceded the general act. First arose the question of the protection of the wife who might be deserted or "put away" and at the same time the question as to what use should be made of allotted lands if the owner could not use the same advantageously. The act of 1891 was devised to overcome these faults in the act of 1887. Next came the question of what should be done with inherited lands which the heir could not use and the act of 1902 was the result. Then came the realization that the conferring of full rights and responsibilities of State citizenship upon incompetent Indians was sure to result in great harm to the Indians and by the act of May 8, 1906 the Congress attempted to correct this condition. The following year Congress recognized, by passing the act of March 1, 1907 (34 Stat. 1015, 1018), that there were instances in which an Indian should be allowed to sell a part or all of his allotment.[38] An item in the Indian appropriation act for the year ending June 30, 1808 read as follows:

> That any noncompetent Indian to whom a patent containing restrictions against alienation has been issued for an allotment of land in severalty, under any law or treaty, or who may have an interest in any allotment by inheritance, may sell or convey all or any part of such allotment or such inherited interest on such terms and conditions and under such rules and regulations as the Secretary of the Interior may prescribe, and the proceeds derived therefrom shall be used for the benefit of the allottee or heir so disposing of his land or interest under the supervision of the Commissioner of Indian Affairs; and any conveyance made hereunder and approved by the Secretary of the Interior shall convey full title to the land or interest so sold, the same as if fee-simple patent had been issued to the allottee.

It is probable that those who sponsored this act did not realize what an effective instrument it would prove to be in the dissipation of the land holdings of the Indians. Excellent argument could be made for its application to individual cases. However, as land comparable in quality and location to the allotted Indian land became constantly more valuable bona fide farmers and speculators turned their attention to Indian allotments and the Indians exhibited an unrestrainable eagerness to sell their land interest for ready cash.

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[38] Cf. Act of August 15, 1894 (28 Stat. 295) authorizing citizen Potawatomi and Absentee Shawnee of Oklahoma, over 21 years of age, to sell land in excess of 80 acres, as modified by act of May 31, 1900 (31 Stat. 247); Act of June 7, 1897 (30 Stat. 72) allowing the Peoria and Miami to sell all land over 100 acres, also modified by act of May 31, 1900, *supra*; and act of June 10, 1896 (25 Stat. 343) allowing Wyandot of Quapaw Agency to sell one-half of their allotted lands.

An act of May 29, 1908 (35 Stat. 444) authorized the Secretary of the Interior to issue a patent in fee-simple to any purchaser of an Indian allotment in place of the approval of a deed made by the Indian. This act also authorized the sale of the interest of a minor on a petition from his natural guardian and the interest of an orphan minor, or other incompetent person, on a petition by a person designated by the Secretary of the Interior to make such petition.

In accordance with the wishes of the Indians, the Five Civilized Tribes in Indian Territory were excepted from the operation of the General Allotment Act. As the years passed great difference of opinion developed in official circles and among those interested in Indian administration as to the desirability of allotting the members of these tribes. They continued to maintain their own governments but the extensive infiltration of whites among them and the exposure of gross irregularities in their tribal governments resulted in action by Congress to end the anomalous situation in Indian Territory.[39] By an act of June 28, 1898 (30 Stat. 495), known as the Curtis Act, Congress provided for a commission to make complete rolls of the Five Tribes with a view to ending the tribal governments and to apportioning the lands of the Indians through allotment. An act of April 21, 1904 (33 Stat. 204) removed all restrictions against the alienation of land allotted to citizens of the Five Tribes who were not of Indian blood. Various special acts had provided for allotments within the Five Tribes,[40] and subsequent special acts authorized the sale of allotments, exclusive of small homesteads, by different classes.[41]

Fourteen years after the act of 1898, on March 4, 1907 the rolls of the Five Tribes were finally closed by act of Congress.[42]

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[39] Com. Ind. Aff., 1905, p. 579.

[40] Creeks, act Mar. 1, 1901 (31 Stat. 861); June 30, 1902 (32 Stat. 500). Chickasaw and Choctaw, act July 1, 1902 (32 Stat. 641); Apr. 21 1904 (33 Stat. 209); Apr. 28, 1904 (33 Stat. 544). Cherokees, act July 1, 1902 (32 Stat. 716). Seminoles, act June 2, 1900 (31 Stat. 250).

[41] Act July 30, 1902 (32 Stat. 500) allowed adult Creeks to sell all except 40 acre homesteads after five years. See Choctaw and Chickasaw act, July 1, 1902 (32 Stat. 641) conditional.

[42] See act Apr. 26, 1906 (34 Stat. 137) for final disposition of tribal affairs. Cf. act June 21, 1906 (34 Stat. 325).

From over 450,000 applicants for enrollment only 101,228 had been enrolled, of whom 2,506 were intermarried persons, 23,382 were classed as "freedmen," consisting of former Negro slaves and their descendants, and 50,671 were classed as mixed-bloods, while only 24,669 were classed as full-bloods.[43]

An act of May 27, 1908 (35 Stat. 312) removed all restrictions on the sale of the lands of about two-thirds of the allottees of the Five Civilized Tribes. This removal affected "all lands, including homesteads, of allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than one-half Indian blood, including minors, and from all lands except homesteads of mixed-blood Indians having at least one-half but less than three-quarters Indian blood." [44] Great losses of land resulted from this legislation with but small realization to the Indian owner in thousands of cases.[45]

It was in connection with the disposal of the mineral lands of the Choctaw and Chickasaw Indians that Commissioner Leupp developed his plan for the incorporation of Indian tribes as joint stock companies for the holding and management of Indian tribal properties. The proposed corporations were to have the general powers and responsibilities of ordinary business corporations but a certain supervision and control was to be exercised by federal officials. A bill directed to the accomplishment of this purpose was introduced as Senate Bill No. 8286 in the Fifty-ninth Congress.[46]

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[43] Com. Ind. Aff., 1907, p. 112.

[44] Com. Ind. Aff., 1908, p. 100.

[45] Cf. act June 21, 1906 (34 Stat. 325, 353) removing all restrictions as to sale, incumbrance or taxation from lands of mixed-blood White Earth Indians; also act Mar. 1, 1907 (34 Stat. 1034); First National Bank *v.* U. S. and Nichols-Chisholm Lumber Co. *v.* U. S., 208 Fed. Rep. 988; Stephenson *v.* Lohu, 131 N. W. 1018; U. S. *v.* Park Land Co., 188 Fed. Rep. 383.

[46] Com. Ind. Aff., 1907, p. 100; cf. act Mar. 2, 1907 (34 Stat. 1221) authorizing the Secretary of the Interior to declare any Indian competent and to apportion to him his pro rata share of any tribal or trust funds; also act Apr. 30, 1908 (35 Stat. 70) directed to the commutation of perpetual annuities.

The Cherokee Indians who did not emigrate west of the Mississippi River gathered in western North Carolina and, between 1838 and 1861, a nearly solid block of land of approximately 50,000 acres, known as the Qualla

During the year ending June 30, 1905 the Interior Department approved 1828 allotments and issued patents for 149 allotments previously approved. In the following year patents were issued for 4,027 allotments and approximately 3,000 others were approved. For the fiscal year 1907 the Commissioner reported 3,363 patents issued and 10,643 allotments approved for which patents had not yet been issued. For 1908 the figures were 10,461 allotments patented and 5,365 approved. For 1909 the patents numbered 6,654 and the approvals 1,346; and in the year ending June 30, 1910 there were 10,992 allotments approved. Allotment of land to Indians was at its height. Numerous acts applicable to particular reservations and providing for allotment and usually for the opening to settlement or the sale of the surplus lands were enacted between 1900 and 1910.[47]

Boundary and over 15,000 acres in small tracts scattered rather widely over four North Carolina counties were purchased for their benefit, partly from funds received under the treaty of December 29, 1835 and partly from borrowed funds. After much confusion and litigation, the Eastern Band of Cherokee finally obtained fee title to these lands, subject to the State laws. [Acts of Congress July 15, 1870 (16 Stat. 362); June 23, 1874 (18 Stat. 213); March 3, 1875 (18 Stat. 412); March 3, 1875 (18 Stat. 447); August 14, 1876 (19 Stat. 139).] By a North Carolina act of 1889, these Indians were incorporated upon the theory that their tribal administration would be facilitated thereby. The Indians experienced serious difficulties in paying taxes on their land and they disposed of valuable timber and forest land for very inadequate prices. [Act August 4, 1892 (27 Stat. 348).] An act of June 4, 1924 (43 Stat. 376) authorized the conveyance of their lands to the United States and the allotment of the same. However, the roll of Eastern Cherokees was not approved until January 20, 1931 by the Secretary of the Interior and on March 4, 1931 (Pub. 841, 71st Cong.) an act was passed providing for a postponement of allotment until further action by Congress. For details regarding these Indians see House Exec. Doc. No. 196, 47th Cong. 1st Sess.

[47] Act June 4, 1900 (31 Stat. 672); June 5, 1906 (34 Stat. 213); May 29, 1908 (35 Stat. 444); June 17, 1910 (36 Stat. 533) Kiowa, Comanche and Apache.
Act June 6, 1900 (31 Stat. 672); Mar. 30, 1904 (33 Stat. 153) Ft. Hall.
Act June 11, 1901 (31 Stat. 766); Mar. 2, 1907 (34 Stat. 1217) Bad River, Wis.
Act May 27, 1902 (32 Stat. 260); June 21, 1906 (34 Stat. 367) Klamath.
Act June 19, 1902 (32 Stat. 744); May 29, 1908 (35 Stat. 458) Spokane.
Act Feb. 3, 1903 (32 Stat. 795) Lac Courte Oreille and Lac du Flambeau.
Act Feb. 20, 1904 (33 Stat. 46); Feb. 16, 1911 (36 Stat. 913) Red Lake.

During the first decade of the twentieth century there was a constantly increasing tendency toward the more rapid allotment of Indian lands and the opening of the surplus lands

Act Apr. 21, 1904 (33 Stat. 224) Sec. 21, Yuma opened.
Act Apr. 21, 1904 (33 Stat. 194) Turtle Mountain.
Act Apr. 21, 1904 (33 Stat. 217) Oto and Ponca in Oklahoma.
Act Apr. 21, 1904 (33 Stat. 225) Pyramid Lake.
Act Apr. 23, 1904 (33 Stat. 302); May 29, 1908 (35 Stat. 448); Mar. 3, 1909 (35 Stat. 796); Apr. 12, 1910 (36 Stat. 296); June 5, 1910 (36 Stat. 863) Flathead.
Act Apr. 27, 1904 (33 Stat. 352) Crow.
Act Apr. 28, 1904 (33 Stat. 539) additional allotment at White Earth.
Act Dec. 21, 1904 (33 Stat. 595); Mar. 6, 1906 (34 Stat. 53); May 6, 1910 (36 Stat. 348) Yakima.
Act Mar. 3, 1905 (33 Stat. 1016) Shoshone.
Proc. July 14, 1905 (34 Stat. 3119) Opening Uintah; cf. May 27, 1902 (32 Stat. 263).
Act Mar. 22, 1906 (34 Stat. 80); June 25, 1910 (36 Stat. 863) Colville; cf. Mar. 8, 1906 (34 Stat. 55).
Act Apr. 21, 1906 (34 Stat. 124) Lower Brule.
Act June 21, 1906 (34 Stat. 325) Walker River; see Proc. Sept. 26, 1905 (34 Stat. 3237).
Act June 21, 1906 (34 Stat. 334) Lemhi, opening to sale.
Act June 21, 1906 (34 Stat. 335) Coeur d'Alene.
Act June 21, 1906 (34 Stat. 349) Sauk and Fox in Kansas.
Act June 28, 1906 (34 Stat. 539) Osage.
Act Mar. 1, 1907 (34 Stat. 1041); May 29, 1908 (35 Stat. 460) Standing Rock; cf. act Feb. 14, 1913 (37 Stat. 675).
Act Mar. 1, 1907 (34 Stat. 1042), Additional allotments at Ft. Berthold; cf. act June 1, 1910 (36 Stat. 445, 458).
Act Mar. 4, 1907 (34 Stat. 1413) New allotments at Jicarilla.
Act Mar. 1, 1907 (34 Stat. 1048) children of Dakota Sioux; May 29, 1908 (35 Stat. 45).
Act Mar. 1, 1907 (34 Stat. 1035) Blackfeet.
Act Mar. 1, 1907 (34 Stat. 1021) Hopi.
Act Mar. 2, 1907 (34 Stat. 1230) Children at Rosebud and exchanges; cf. Apr. 23, 1904 (33 Stat. 254) and May 30, 1910 (36 Stat. 448).
Act May 29, 1908 (35 Stat. 457) restoration in New Mexico extension.
Act May 29, 1908 (35 Stat. 460) also authorized opening Cheyenne River.
Act May 30, 1908 (35 Stat. 558) Ft. Peck.
Act Mar. 3, 1909 (35 Stat. 752) Oklahoma Modocs to be allotted at Klamath.
Act Mar. 3, 1909 (35 Stat. 805) Proposed equalization of Creek allotments; rejected by Creeks, see Com. Ind. Aff., 1909, p. 43.
Act May 27, 1910 (36 Stat. 440) Pine Ridge. See Mar. 1, 1907 (34 Stat. 1048); and May 29, 1908 (36 Stat. 451).
Act May 13, 1910 (36 Stat. 367) Sale reserved timber lands at Siletz.

either to homestead entry or to sale as grazing, timber or mining lands. There seemed to be an almost unlimited demand for agricultural and grazing lands for homestead purposes and a rather strong demand for timber and mineral lands. However, this demand does not adequately explain the celerity with which bills were passed in Congress providing for the allotment of particular reservations and the opening of surplus lands. This movement seems to have been largely due to a conviction on the part of the leaders in Congress that the allotment of the Indians offered the most practicable method of hastening the day when the government would no longer need to make large appropriations for the support, civilization and education of the Indians. Commissioners Jones and Leupp were apparently as determined in the pursuance of this policy as were those guiding the course of the legislative branch of the government. The readiness with which the numerous tribes of Indians agreed to the application of the general allotment act, or special provisions for allotment, on the reservations that they occupied indicates that they had also reached the conclusion that allotment was desirable. Many Indians favored allotment because of the personal advantages that they believed they would secure through the selection of the richer agricultural lands, the more heavily timbered lands, or areas having special values due to location. Others felt that only through allotment could they save part of their lands from the tide of settlers and speculators. Possibly the greater part of them reluctantly reached the conclusion that they must adopt the white man's manner of life and this seemed to involve the acceptance of allotments.

Commissioner Leupp was thoroughly imbued with the conservation theories of the Roosevelt administration and Robert G. Valentine, who succeded Leupp, as Commissioner, on June 19, 1909 shared these views. In his first report, dated September 15, 1909, Valentine urged (p. 73) legal authority for the leasing of tribal mineral lands on reservations established by Executive order, authority for the sale of mature and dead timber from both tribal lands and allotments, and provision for the conservation of power resources of reservations. While the reservations contained vast resources in minerals, forests and power sites, the Indians were in many instances living in abject poverty with such resources unused. Valentine stated that the annual loss to the Indians because of the lack of utilization of over-mature timber was $1,000,000. By letter of January 15, 1910 the Secretary of the Interior submitted to the speaker of the House of Representatives a bill, that had been prepared in the Indian Office, to authorize the sale of the mature and dead timber from both tribal and allotted lands.[48] Proposed legislation for the reservation of power and reservoir sites on Indian lands from disposal and for improved procedure for the leasing and sale of Indian lands was also suggested to the Congress. Late in the session these proposed legislative items, together with a large number of others, were incorporated into an " omnibus bill " which was finally passed and received the approval of President Taft on June 25, 1910 (36 Stat. 855)

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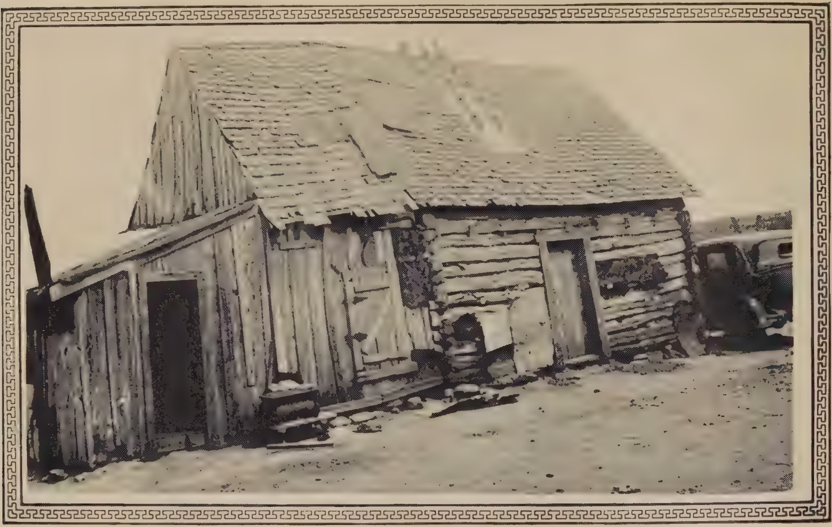
[48] House Rep. No. 557, 61st Cong. 2d Sess., Senate Bill 4548, providing for the sale of timber from allotments only, had passed the Senate at the 1st Sess. of 60th Cong.; a similar bill S. 5901 was before the same Congress; cf. S. 5604, 61st Cong. for reserving water power of Indian reservations.

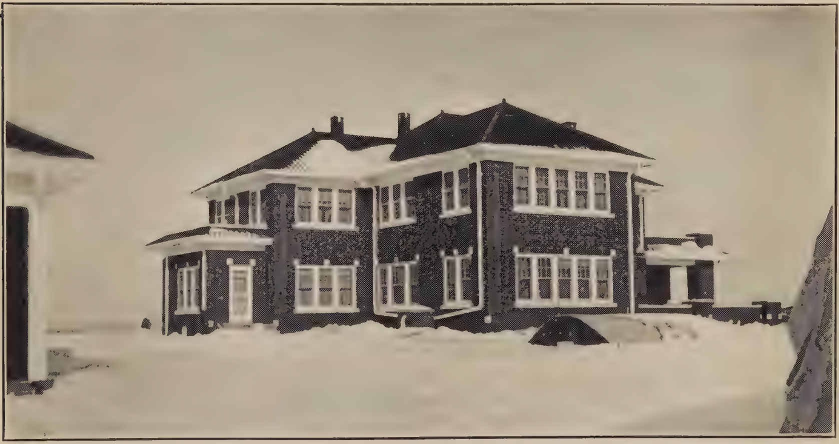
A land tenure situation somewhat similar to that of the Eastern Cherokee of North Carolina developed in the State of Iowa. A group of the Sauk and Fox tribe refused to accept allotments in Kansas or Oklahoma and in 1857 and subsequent years purchased, with their own funds, approximately 3500 acres of land in Tama County, Iowa. Title to these lands was taken by trust deeds in the name of the Governor of Iowa or of the Indian Agent. By act of March 2, 1867 (14 Stat. 507), Congress recognized the right of these Indians to receive their pro rata shares of annuities, due to the Sauk and Fox Indians of the Mississippi under treaties of 1837 and 1842, so long as they were peaceful and had the consent of Iowa to remain in that State. By an act of June 10, 1896 (29 Stat. 331), the United States accepted jurisdiction over these Indians and their lands, as tendered by the legislature of Iowa in an act of January 1, 1896 (See Com. Ind. Aff. 1898, p. 81). By renting a large portion of their better lands to white farmers, the members of this group have been able to meet taxes and other expenses but are not themselves progressive farmers.

CONTRASTS IN INDIAN HOMES IN OKLAHOMA IN 1935.



Home of a Member of the Choctaw Tribe.

The automobile of antiquated type at the rear of the house does not account entirely for the poverty exhibited, for there are many similar homes where no car is parked.



The home of an Osage woman, a part of whose income has been invested in this pretentious country home.

CHAPTER VII

THE DEVELOPMENT OF RESERVATION RESOURCES 1910-1936

The act of June 25, 1910 (36 Stat. 855) contained so many items of legislation of vital importance to the Indians and included features of so marked a departure from previous policy that the fiscal year beginning July 1, 1910 may appropriately be accepted as the first in a new period in Indian administration.

The General Allotment Act of February 8, 1887 made no provision for the sale of an allotment during the time that it was held in trust by the United States. Upon the death of an allottee his allotment descended to his heirs in accordance with the laws of the State or Territory in which the land was situated. No other disposition could be made either by conveyance or by will.[1] The act of May 27, 1902 (32 Stat. 275) authorized the sale by the adult heirs of the allotment of an Indian who should die while the land was still held under a trust patent. The inherited interests of minor heirs of such a deceased allottee could also be sold under the act through proper procedure.[2] An act of May 8, 1906 (34 Stat. 182) still further liberalized the law as to the land of deceased allottees. This act not only directed the issuance of a patent in fee simple to the heirs of an Indian who died holding " trust lands," but also the issuance of a fee patent direct to a purchaser of an Indian allotment. The act of 1906 declared that the determination of the heirs of an allottee by the Secretary of the Interior should be final. An act of March 1, 1907 (34 Stat. 1018) authorized any non-competent Indian to sell his interest in any land held under a patent containing restrictions upon alienation under such rules and regulations as the Secretary of the Interior might prescribe. An act of May 29, 1908 (35 Stat. 444) authorizing the issuance of a fee patent direct to the purchaser of restricted land, in place of a deed from the Indian owner or owners, also authorized the sale of the land interests of a minor without resort to a court process. In effect this act clothed the Secretary of the Interior with the functions of a probate court. The act of 1908 excluded from its provisions lands within the States of Minnesota, South Dakota and Oklahoma. However, in these three States a patent in fee could be issued direct to the purchaser under the act of May 8, 1906 (34 Stat. 182) provided the allotment was approved subsequent to May 8, 1906 and, if the allotment was made before May 8, 1906, title could be given the purchaser by warranty deed approved by the Secretary of the Interior.

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[1] Com. Ind. Aff., 1905, p. 69. It had become apparent that, through successive inheritances of land estates, almost insurmountable complications would result. In fact, notwithstanding the legislation enacted to forestall the minute division of interests through inheritance, such division has occurred that lease rentals on allotments within certain reservations have been apportioned to heirs in amounts of a very few cents annually to individuals (as low as seven cents each). In 1933 there were 97 heirs sharing in the estate of Joseph Renville, as administered by the Sisseton Agency in South Dakota.

[2] But this act did not authorize the disposal of a trust allotment by will. See Com. Ind. Aff., 1905, p. 69.

Section one of the act of June 25, 1910 (36 Stat. 855) specifically devolved upon the Secretary of the Interior the responsibility of determining the legal heirs of any Indian (except Osage and members of the Five Civilized Tribes in Oklahoma) who should die before the expiraton of the trust period applicable to his allotment and before the issuance of a fee simple patent, provided the allottee had not made a will in accordance with the terms of another section of the act. If the Secretary decided that the heir or heirs of the decedent were competent to manage his or their own affairs, he was required to issue to the heir or heirs a patent in fee simple for the allotment. If he found one or more of the heirs to be incompetent he might, in his discretion, cause the lands to be sold. It was further provided that if the Secretary found the lands of the decedent to be susceptible of partition to the advantage of the heirs, he might cause the shares of such as were competent, upon their petition, to be set aside and patents in fee issued therefor. (Amended May 18, 1916 (39 Stat. 123, 127))

This section required that all sales of Indian allotments authorized by the act, or by any other act, be made under regulations prescribed by the Secretary of the Interior, but required a deposit at the time of the sale of ten per centum of the purchase price, which was to be forfeited if the purchaser did not comply with the terms of the sale. The act also provided that, where the remainder of the purchase price was to be paid in deferred payments, " a further amount, not exceeding fifteen per centum of the purchase price may be forfeited for failure to comply with the terms of the sale." All forfeitures were to enure to the benefit of the heirs; and upon payment of the full purchase price, the Secretary was required to issue a patent in fee simple to the purchaser. The proceeds of such sales were to be paid to competent heirs and held subject to use and expenditure during the trust period for such heir or heirs as should be found to be incompetent.

Section one also authorized the Secretary of the Interior, in his discretion, to issue a certificate of competency, upon application therefor, to any Indian, or in case of his death, to his heirs, to whom a patent in fee containing restrictions on alienation had been or might thereafter be issued. Restricted patents of this character had been issued to a large number of Indian allotted under the provisions of treaties which ante-dated the General Allotment Act of 1887.

Section two of the act authorized any Indian twenty-one years of age, or over, to dispose of his or her allotment by will prior to the expiration of the trust period and before the issuance of a fee simple patent. However such wills were to be valid only when approved by the Commissioner of Indian Affairs and by the Secretary of the Interior. The final sentence in this section declared that sections one and two were not applicable to the State of Oklahoma, yet section thirty-one of the same act indicated that only the Osage and the Five Tribes were to be excluded from the provisions of the act. (Amended 37 Stat. 678)

Section three authorized the Secretary of the Interior to permit any Indian having any right, title or interest in an allotment to relinquish such interest for the benefit of any of his or her children to whom no allotment had been made, with the requirement that the Secretary should then cause the estate so relinquished to be allotted to such child or children subject to all conditions which attached to it before such relinquishment.

Section four authorized the leasing by any allottee, for a period of not to exceed five years, of any Indian allotment held under a trust patent, provided the lease were made in conformity with rules and regulations prescribed by the Secretary of the Interior, and required that the proceeds of such lease be paid to the allottee or his heirs, or be expended for his or her benefit, in the discretion of the Secretary. This act extended the period allowed for grazing leases from three years to five years the same as for farming, and business purposes.[3] However, the regulations for the leasing of allotted Indian lands for farming and grazing purposes, approved by the Assistant Secretary of the Interior on July first 1916 still limited the period for grazing leases to three years. This limitation was apparently maintained because of a belief in the Department that such limitation was essential to the protection of the interests of the Indians.

Section five made it a misdemeanor, punishable by a fine not exceeding $500 for the first offense and a similar fine or imprisonment, not exceeding one year, or both such fine and imprisonment, in the discretion of the court, for the second offense of inducing an Indian to execute any contract, deed, mortage, or other instrument purporting to convey any land or interest therein held by the United States in trust for an Indian, or for the offense of offering any such instrument for record in the office of any recorder of deeds.

Section 50 of an act of March 4, 1909 (35 Stat. 1098) codifying and amending the penal laws of the United States, contained a reenactment, with important modifications, of the previous law making it a criminal offense, punishable by a fine of not over $500, or imprisonment for not over one year, or both such fine and imprisonment, for any one to unlawfully cut or destroy any tree growing or standing upon land which had been reserved or purchased by the United States for any public use, or upon lands belonging to or occupied by any tribe of Indians under authority of the United States. Section 53 of this same code provided a fine of not exceeding $1,000, or imprisonment for not over one year, or both, for the building and leaving unextinguished of a fire in or near any forest, timber, or other inflamable material upon the public domain. Section 50 of this code obviously protected the unallotted lands of Indian reservations from unauthorized trespass but there was a question whether the language would be held to embrace allotted lands. Section 53 afforded no protection from the careless or negligent setting and leaving of fires on either allotted or unallotted lands belonging to or occupied by Indians under authority of the United States. Of course the common law remedies were applicable, but these were not considered sufficient protection from the unlawful cutting of timber on allotments or from the careless setting of fires on Indian lands or the leaving of fires unextinguished.

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[3] Leases for farming and grazing purposes could be made on Osage lands under an act of June 28, 1906 (35 Stat. 545) and on lands of the Five Civilized Tribes under an act of May 27, 1908 (35 Stat. 312). An item in the Indian Appropriation act for the fiscal year 1910 approved March 3, 1909 (35 Stat. 781, 783) had authorized the leasing of allotments, except those of the Osages and Five Tribes for any term of years for mining purposes in the discretion of the Secretary of the Interior. The latter act also authorized (p. 783) the cancellation of unsuitable allotments and the making of a new allotment of equal area from vacant lands of the ceded portion of the reservation where the allottee belonged; but this act was not to apply to lands formerly within Indian Territory. See Com. Ind. Aff., 1912, p. 61.

Section six of the " omnibus act " of June 25, 1910 amended section 50 of the penal code so as to impose a fine of not over $500, or imprisonment for not over one year or both, for the offense of unlawfully cutting, injuring or destroying any tree growing, standing or being upon any Indian allotment while the same was held in trust and inalienable by the allottee except with the consent of the United States. Section six also amended section 53 of the penal code so as to impose the same penalties for the setting and leaving of a fire on Indian tribal lands or on lands allotted to Indians and held with governmental restrictions upon alienation as if the said Indian lands were public domain of the United States.

As before stated the Supreme Court of the United States had early announced that the Indians had only a right of occupancy on the lands that they occupied, the fee title being in the United States.[4] This position was taken by the courts, not for the purpose of limiting the enjoyment of the incidents of ownership by the Indians, but as affording the most secure basis upon which the United States could effectively protect its own interests and those of the Indians. As timber standing upon the land was a part of the realty the title to this was also in the United States. However the Indians were allowed a large measure of liberty in the use of the lands they occupied and, as the years passed, there appears to have developed a strong conviction on the part of those most closely associated with the Indians that they should be allowed to acquire the means of a living through the sale of a part of the timber from the lands that they were occupying. As early as 1861 the Chippewa of Minnesota at Rabbitt Lake entered into a contract for the sale of timber from the lands occupied.[5] In 1865 fire injured timber was sold from four sections on the eastern township of the two occupied by the Stockbridge and Munsee Indians adjacent to the Menominee Reservation in Wisconsin.[6] As early as 1867 timber was logged and sold from the Tulalip Reservation in Washington, serious irregularities in the sale being later alleged.[7] In 1871 Edward P. Smith, in charge of the Chippewa Agency for Minnesota, declared that the pine timber on Indian lands was a continual annoyance because of the efforts of whites to buy the same from individual Indians or from the bands.[8] He stated: " The pine itself is rapidly wasting under the fires which run over the country every year." . . . " I recommend that the Department assume discretionary control over all the pine timber on the reservations and take measures to bring it to market. . . . The pine on the Pillager and Mississippi Reservations, accessible to driving streams, is not far from

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[4] Graham's Lessee v. McIntosh, 8 Wheaton 543, decided Feb. 1823; Cherokee Nation v. Georgia, 5 Peters 1, decided Mar. 6, 1831; Worcester v. Georgia, 6 Peters 515, decided Mar. 30, 1832; United States v. Rogers, 4 Howard 567, decided Dec. 1846.

[5] Com. Ind. Aff., 1861, p. 83; Oct. 29, 1857 Department refused approval of contract of Dorvillus Morrison with Rabbit Lake Chiefs.

[6] *Ibid.*, 1865, p. 435.

[7] *Ibid.*, 1869, p. 143.

[8] *Ibid.*, 1871, Accom. Paper No. 115, pp. 590-593.

150,000,000 feet. The Red Lake pine will amount to from 50,000,000 to 75,000,000 feet. The proceeds from this timber, applied mainly to agricultural and educational purposes will go far toward helping the Indians to civilization." On October 2, 1872 Indian Agent Selden N. Clark of the Lake Superior Agency made a contract with William A. Rust of Eau Claire, Wisconsin, for the sale of all pine timber on the Lac Courte Oreille Reservation within three miles of any and all lakes and streams that were or could be made navigable for the floating of logs.[9] The consideration was the relatively small sum of $50,000, payable in five equal instalments beginning December 1, 1872. This contract was approved by the Acting Commissioner of Indian Affairs and by Secretary of the Interior Delano on October 10, 1872. It allowed ten years from December 1, 1872 for the removal of the timber. On October 26, 1872 twelve Lac Courte Oreille chiefs affixed their marks to a written acknowledgment of their approval of this contract. On November 19, 1872 Laird and Norton of Winona, Minnesota, offered to pay $100,000 for the Lac Courte Oreille timber but did not state the terms of payment, limit the area to be logged, or state the time for removal and the Assistant Attorney General for the Interior Department held that the Rust contract should not be set aside for inadequacy of consideration. However, this offer evidently raised a serious question as to the terms of the Rust contract and a supplemental contract between S. N. Clark and W. A. Rust, extending the term of the contract to December 1, 1892 and providing for the payment of $75,000 additional in instalments of $5,000 each year for 15 years beginning December 1, 1877 was approved by Commissioner Edw. P. Smith and Acting Secretary Cowen on April 19, 1873.

In the autumn of 1871 the Department of the Interior authorized the cutting of timber from tribal lands of the Menominee Reservation in Wisconsin to aid Indian support and to conserve the value of timber that was alleged to be wasting.[10] Similar cutting was authorized annually through the winter of 1875-76.[11] Near the close of the year 1875 the authority for such cutting was seriously questioned and a letter of January 14, 1876 from the Secretary of the Interior directed that it cease until specific legal authority could be obtained.[12] An act of April 25, 1876 (19 Stat. 37), authorizing the Department to dispose of the logs cut in 1875-76, seems to have been construed as justifying the resumption of logging operations in the autumn of 1876 at the urgent request of the Indians.[13] The Indian Agent for the Menominee does not seem to have been able to resist the importunity of the Indians and 1,500,000 board feet were cut during the winter of 1876-77. Such cutting aroused a storm of protest and from the autumn of 1877 to that of 1881 no cutting for sale purposes was reported. However on November 28, 1881 the Commissioner of Indian Affairs instructed the Menominee Agent to allow the Indians to cut dead timber for sale. His action was challenged but the cutting was approved by act of March 31, 1882 (22 Stat. 36).[14] A companion act of March 22, 1882 (22 Stat. 30) validated the action of the Indian Agent in cutting timber in 1876-77, and in the selling of the logs. In a letter of May 19, 1882 Secretary H. M. Teller advised the Commissioner of Indian Affairs that dead and down timber might be cut and sold from the Sisseton Reservation[15] and, without a specific act of Congress authorizing future cutting, the removal of timber from the Menominee was continued from year to year (except during the winter of 1885-86) through the winter of 1887-88.[16] When authority was requested for the winter of 1888-89, the Department referred the matter to the Attorney General, who held in an opinion of November 20, 1888 [17] that there was no legal authority for the cutting of timber from Indian lands.

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[9] Ind. Of. Files, La Pointe I. 207, '72; C. 191, '72; R. 13, p. 258; R. 239, '73; L. 140, '72. See also contract for Red Lake timber within three miles of navigable streams approved by Com. Walker, Nov. 8, 1872 and one for sale all timber within four miles of such streams on Leech Lake Reservation approved Nov. 8, 1872 by Acting Secretary Cowen.

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[10] Com. Ind. Aff., 1871, p. 572; 1872, p. 19.

[11] *Ibid.*, 1872, pp. 19 and 204; 1873, p. 178; 1874, p. 186; 1875, p. 370.

[12] Cf. Agent J. C. Bridgman Report, Sept. 1, 1876, Com. Ind. Aff., 1876, p. 146.

[13] Ex. Doc. No. 74, 47th Cong. 1st Sess., in Misc. Doc. Ind. Of. Lib., pp. 6405, 6158, 6259.

[14] Com. Ind. Aff., 1882, pp. 172, 191, 192; Sen. Rep. No. 172, 47th Cong. 1st Sess., in Misc. Doc. Ind. Of. Lib., p. 6156.

[15] *Ibid.*, 1888, p. xliv; File 9636-1882; Ind. Of. Reg., April 1, 1904, p. 105.

[16] *Ibid.*, 1885, p. 249; 1886, p. xlii; 1887, xlviii; 1888, p. xliv; 1890, p. cxi.

This decision brought the subject definitely to the attention of Congress and resulted in an act of February 16, 1889 (25 Stat. 673) reading:

> That the President of the United States may from year to year in his discretion under such regulations as he may prescribe authorize the Indians residing on reservations or allotments, the fee to which remains in the United States, to fell, cut, remove, sell or otherwise dispose of the dead timber, standing or fallen, on such reservation or allotment for the sole benefit of such Indian or Indians. But whenever there is reasonable cause to believe that such timber has been killed, burned, girdled, or otherwise injured for the purpose of securing its sale under this act then in that case such authority shall not be granted.

However, during the winter of 1888-89 there were cut from the Menominee Reservation by the Indians 18,000,000 board feet, log scale, and by far the greater part of it must have been cut prior to the time the law authorizing cutting was enacted.[18] In the following year over 25,000,000 feet were cut. It is difficult to believe that all of the timber cut in 1888-89 was removed to fit the lands for agricultural use and thus permissible under the decision in United States v. Cook (19 Wallace 591; 86 U. S. 591), or that all of the 25,000,000 feet cut in the winter of 1889-90 was either removed to fit the land for agricultural production or was dead and thus eligible for cutting under the act of February 16, 1889. In the case of United States v. Cook the timber had been cut without the consent of the Indian Commissioner and the right of the United States to exercise control over the cutting of timber was sustained by the court in its holding that Indians occupying a reservation had no greater right to cut timber from the lands so occupied than had a remainderman at common law; that is, they might take timber in reasonable quantity for their personal use or to fit the land for cultivation but they must not commit waste. The timber removed from the Menominee Reservation between 1871 and 1889 was cut with the consent of the Department of the Interior and ostensibly was all cut to salvage the value of dead timber or to clear the land for cultivation. Furthermore, as early as June 21, 1882 the Senate had reported favorably on a bill to authorize the sale of timber from the Menominee Reservation.[19] On January 29, 1883 the House had reported favorably on a similar bill.[20] On January 22, 1884 the Senate again reported favorably upon the subject.[21] Evidently a large number of the members of both houses of Congress recognized that Indians should be afforded an opportunity to earn a living by the utilization of timber resources on their reservations and, by an act of June 12, 1890 (26 Stat. 146), the cutting of 20,000,000 board feet of green timber annually from the Menominee Reservaton was authorized. Logging operations were conducted under this act until it was superseded by the act of March 28, 1908 (35 Stat. 35) authorizing the manufacture of lumber and other forest products at a mill or mills on the reservation in place of the sale of the logs as contemplated by the act of 1890. An act of June 28, 1906 (34 Stat. 547) was supplementary to the act of 1890 and provided for the logging and sawing into lumber of the dead and down timber within a specified part of the reservation that had been visited by a very destructive windstorm. Extensive logging was done under this act during the winter of 1907-08 but before any mill was erected this act was repealed by section six of the act of March 28, 1908.

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[17] 19 Opin. Atty. Gen. 194; Com. Ind. Aff., 1888, p. xlv; see 19 Opin. Atty. Gen. 710, 1890. Also *ibid.,* p. 232 and again p. 559 regarding allotment timber.

[18] Com. Ind. Aff., 1889, pp. 89, 90; 1890, p. cx.

Although the treaty of September 30, 1854 (10 Stat. 1109) had provided for the allotment of the Chippewa Indians of Lake Superior, no real demand for allotment arose until about 1882 when the Indians began to ask for allotments in order to utilize the pine timber thereon.[22] As allotments were then made the Indians proceeded to sell the timber (beginning in the season of 1882-83), the superintendent reporting late in 1882 that 131 patents in fee with restrictions on alienation for 80 acres each had been issued.[23] During the years immediately preceding 1882 the Indians of the Bad River Reservation had found employment with logging companies by assisting in the sorting of logs driven down the Bad River from privately owned lands south of the reservation.[24] Just as timber had been sold from the Lac Courte Oreille Reservation by the chiefs in the early seventies, probably timber had been illegally removed from Bad River lands prior to 1882. The plan of allowing allottees to sell timber may have resulted largely from the desire of the Indian Agent at La Pointe, W. R. Durfee, to secure a more equitable distribution of the proceeds from the sale of timber. The desire to protect the Indians and to encourage them in agricultural pursuits is shown by the rather impractical condition under which the Department of the Interior authorized the sale, namely that each allottee should be permitted to sell the timber from only three-fourths of his allotment, leaving one-fourth in a compact body " for future use for fuel, fencing etc." The authorization also provided that the Indians should not sell stumpage, or have white crews upon the reservation, but must cut and deliver the logs to the mill, bank of stream, or lake, themselves.[25] The agent and the Commissioner of Indian Affairs must approve all contracts of sale. Nevertheless some Indians sold without approval and without written contracts.[26] The requirement that the Indians do the logging themselves appears to have been generally followed during the first three logging seasons;[27] However, the increase from a " cut " of slightly less than 6,000,000 feet in the winter of 1882-83 to one of nearly 45,000,000 in the logging season 1883-84 raises a rather strong presumption that others than Indians may have been employed in the logging operations during the second period. A Congressional Committee declared in its report of March 2, 1889 that, with the advent of the Democratic administration in 1885, the policy of confining all logging work to Indians was completely abandoned as a means of advancing the interests of the loggers and mill operators. The figures submitted by the Committee showing an increase in the cut to nearly 64,000,000 in 1885-86, to nearly 129,000,000 in 1886-87, and to over 190,000,000 in 1887-88 lend much weight to the allegation that large numbers of white men were imported into the reservations. However, it should be noted that the figures for the three fiscal years 1882 to 1885 inclusive include only the Bad River and Lac Courte Oreille Reservations, while the data for the three subsequent years include also the Lac du Flambeau and the Fond du Lac Reservations. The report of the Committee contains unmistakable evidence of strong political bias. It is clear, however, that the Indians were being allotted at a very rapid rate and that their timber was being sold and the proceeds spent too freely.[28]

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[19] Sen. Rep. No. 744, 47th Cong. 1st Sess., in Misc. Doc. Ind. Of. Lib., p. 6789.

[20] House Rep. No. 1895, 47th Cong. 2d Sess., Misc. Doc. Ind. Of. Lib., p. 7014.

[21] Sen. Rep. No. 60, 48th Cong. 1st Sess., in Misc. Doc. Ind. Of. Lib., p. 7764; see 6th Rep. Ind. Rights Ass., Dec. 15, 1888, in Misc. Doc. Ind. Of. Lib., p. 14120.

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[22] Sen. Rep. No. 2710, 50th Cong. 2d Sess., Mar. 2, 1889, p. iv.

[23] Com. Ind. Aff., 1882, p. 173.

[24] *Ibid.*, 1881, p. 181.

[25] *Ibid.*, 1884, p. liii; Sen. Rep. 2710, p. iv.

[26] *Ibid.*, 1884, p. liii.

[27] Sen. Rep. 2710, p. iv.

The strongly condemnatory report of 1889 by a Congressional Committee had a very repressive effect on sales of timber from Indian lands. However, neither the Indians nor the lumbermen would allow the subject to rest. Practically all of the lands within the Chippewa reservations in Michigan, Wisconsin and Minnesota were forested. The Indians desired to obtain an income from the timber and the argument that the Indians could not use their allotments until the timber was removed was very plausible. The Indians continued to sell their timber surreptitiously.[29] It seemed that something must be done to meet the situation and in 1892 the President authorized the sale of both dead and live timber from allotments of Chippewa Indians allotted on the Lac du Flambeau Reservation. In 1893 authority was granted for the sale of timber by allottees of the Bad River Reservation under substantially the same regulations as those prescribed for Lac du Flambeau.[30] Later authority was granted for sales from the Red Cliff and Lac Courte Oreille Reservations under a similar plan, and under special acts timber was sold from the Fond du Lac and Grand Portage Reservations. These six reservations were all administered from the La Pointe Agency at Ashland, Wisconsin. The cutting of timber under contract continued on several of these reservations on a rather large scale for nearly thirty years after 1892. Sales on a more restricted scale were made from allotments in Michigan and in Washington where fee patents with restrictions upon alienation had been issued.

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[28] Com. Ind. Aff., 1884, p. liii; 1884, p. 180; 1886, p. xxviii.

[29] Com. Ind. Aff., 1887, p. 124.

[30] Authority for Lac du Flambeau, Sept. 28, 1892; for Bad River, Dec. 6,

In his annual report for 1884 the Indian Agent at White Earth, in discussing the Red Lake Reservation then under the White Earth jurisdiction, mentioned the getting out of logs from fallen timber as a "new industry" which resulted in the cutting of 1,338,470 feet which sold at about $5 per thousand feet. Agent Luse said: "The result was not what had been predicted and hoped. . . . The enterprise was an unprofitable one."[31] However, in 1887, T. J. Sheehan, Agent at White Earth, reported the serious injury by fire of 300,000,000 feet of pine timber on the White Earth and Red Lake reservations in October 1886 and May and June of 1887.[32] In 1888 the same agent reported that, under an authority given by the Secretary of the Interior in December 1887, the White Earth Indians had, during the winter of 1887-88, cut, banked and sold nearly 4,000,000 feet of burned and wind-thrown timber while the Red Lake Indians had cut and banked but not sold nearly 1,000,000 feet.[33] In subsequent years such operations were conducted on a larger scale and, as at Menominee, the charge was made that the fires that injured the timber did not start accidently and that large quantities of green timber were cut under cover of dead timber operations.[34] The act of June 7, 1897

1893; for Red Cliff, July 29, 1897; for Lac Courte Oreille, Dec. 11, 1902; Bad River revised Dec. 29, 1902; White Earth and Red Lake sales Authority Dec. 11, 1900; Leech Lake, June 2, 1904; Fond du Lac, June 9, 1905.

[31] Com. Ind. Aff., 1884, p. 105.

[32] *Ibid.*, 1887, p. 129.

[33] *Ibid.*, 1888, p. 149.

[34] *Ibid.*, 1885, p. xxxi, suspicion of firing timber and proven cutting of green timber at Menominee, p. 116, green timber cut at Red Lake; 1887, p. xlvii, firing the woods and cutting green timber cause of Departmental prohibitory order.

(30 Stat. 62,90) authorizing the sale of dead timber from Chippewa tribal and allotted lands in Minnesota was repealed by Section 4 of the act of June 27, 1902 (32 Stat. 404) providing for the sale of all timber on Ceded Chippewa lands separate from the land and on scale.

A special act of February 12, 1901 (31 Stat. 785) authorized the Chippewa Indians of the Grand Portage Reservation in Minnesota to sell the timber from their allotments and on April 21, 1904 (33 Stat. 209) this privilege was extended to all the Chippewa of Minnesota. Under authority of these acts, sales were made from allotments of most of the Chippewa reservations. Mixed-blood allottees of the White Earth Reservation were permitted to sell under the act of June 21, 1906 (34 Stat. 325) removing all restrictions upon the sale of their allotments.

An act of March 28, 1906 (34 Stat. 91) authorized the sale of the timber from allotments and unallotted lands of the Jicarilla Reservation in New Mexico but the administration of this act was considered impracticable and an act of March 4, 1907 (34 Stat. 1413), providing for the cancellation of allotments previously made to the Jicarilla Indians and a reallotment, authorized the sale of the timber by the Secretary of the Interior from allotments during the period that they should be held in trust and from the surplus lands for a period of twenty-five years, with an equitable division of the proceeds. The greater part of the timber on the Jicarilla Reservation was sold subsequent to 1910 and removed under authority of the act of March 4, 1907.

Practically all legislation regarding unallotted forested land on Indian reservations, enacted prior to the year 1910, had contemplated either the reservation of small areas from which it was assumed that the Indians would desire to obtain supplies of firewood and building materials;[85] or the opening of such lands to entry or sale under the public land laws.[36] In 1910 a policy or reserving all the forested lands of certain tribes was adopted where such lands were of limited extent.[37] An act of March 3, 1909 (35 Stat. 796), advocated by Senator Joseph Dixon of Montana, had amended the Flathead act of April 23, 1904 (33 Stat. 302) so as to authorize the sale of the timber separate from the land on the lands classified as timberlands, but this act did not contemplate the holding of the cut over lands by the Indians, or their management as productive forests, although Senator Dixon later declared that one of his primary purposes in urging the legislation was to insure the conservation of the forest. He believed that the removal of the timber under governmental regulations would effect a more conservative logging than would be carried out if private interests should purchase the land and timber together.

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[85] Umatilla act of March 3, 1885 (23 Stat. 341); Nez Perce act of August 15, 1894 (28 Stat. 327, 330); Siletz act of August 15, 1894 (28 Stat. 323, 325), see Presidential Proclamation of May 16, 1895 (29 Stat. 866) and act of May 13, 1910 (36 Stat. 367) authorizing the sale of the timber reserves at public auction; Yakima act of December 21, 1904 (33 Stat. 595, 596); Flathead act of March 3, 1905 (33 Stat. 1048, 1081).

Sections seven and eight of the Indian " omnibus act " of June 25, 1910 (25 Stat. 857) heralded an entirely new day in the administration of the forested lands on Indian reservations. These two sections read as follows:

> Sec. 7. That the mature living and dead and down timber on unallotted lands of any Indian reservation may be sold under regulations to be prescribed by the Secretary of the Interior, and the proceeds from such sales shall be used for the benefit of the Indians of the reservation in such manner as he may direct: *Provided,* That this section shall not apply to the States of Minnesota and Wisconsin.

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[36] Chippewa act of January 14, 1889 (25 Stat. 642), Act of June 27, 1902 (32 Stat. 400), Act May 23, 1908 (35 Stat. 268), Act of June 25, 1910 (36 Stat. 855, 862, Sec. 27); Ft. Hall act of June 6, 1900 (31 Stat. 674); Flathead act of April 23, 1904 (33 Stat. 302); Yakima act of December 21, 1904 (33 Stat. 596); Colville act of March 22, 1906 (34 Stat. 80); Blackfeet act of March 1, 1907 (34 Stat. 1017, 1035); Spokane act of May 29, 1908 (35 Stat. 458); Standing Rock and Cheyenne River act of May 29, 1908 (35 Stat. 460); Choctaw and Chickasaw act of April 26, 1906 (34 Stat. 137, Secs. 7 and 16).

Cf. Jicarilla act of August 15, 1894 (28 Stat. 302), sale of $20,000 of timber authorized but not made, and Chippewa act Feb. 26, 1896 (29 Stat. 17), amended in 1902.

[37] Pine Ridge act of May 27, 1910 (36 Stat. 442); Rosebud act of May 30, 1910 (36 Stat. 448); Ft. Berthold act of June 1, 1910 (36 Stat. 458; Ft. Hall act of March 3, 1911 (36 Stat. 1064).

> Sec. 8. That the timber on any Indian allotment held under a trust or other patent containing restrictions on alienations, may be sold by the allottee with the consent of the Secretary of the Interior, and the proceeds thereof shall be paid to the allottee or disposed of for his benefit under regulations to be prescribed by the Secretary of the Interior.

At last the Congress had reached the conclusion that the forests on Indian reservations could generally be made to contribute to the support and advancement of the Indians through the sale of the products of the forest instead of through the sale of the land with the timber thereon. As a result of the conservation propaganda of the Roosevelt administration, it is probable that many of the members of Congress had grasped the conception of forest administration through use.

In the annual appropriation act for the Indian Service for the fiscal year ending June 30, 1910, passed at the preceding Second Session of the Sixtieth Congress, and approved by President Theodore Roosevelt on March 3, 1909 (35 Stat. 781, 783) was an item reading as follows:

> To enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to make investigations on Indian reservations and take measures for the purpose of preserving living and growing timber, and removing dead timber, standing or fallen; to advise the Indians as to the proper care of forests, and to conduct such timber operations and sales of timber as may be deemed advisable and provided for by law, one hundred thousand dollars, of which ten thousand dollars shall be immediately available: *Provided*, That this section shall not apply to the Menominee Indian Reservation in Wisconsin.

This was the first specific appropriation that Congress had ever made from federal funds for the purpose of protecting and improving the forests on Indian reservations. Prior to this time investigations and prosecutions for timber trespass on Indian land had been conducted through the division of the General Land Office that had charge of similar activities on the public domain and the administration of timber sales on Indian lands had been carried out through the use of a part of the proceeds from the sales supplemented by relatively small amounts taken yearly from an appropriation designated as "Contingencies, Indian Department." The appropriation of $100,000 in the act of 1909 made it possible for the Indian Service to organize a separate unit for the protection and management of Indian forests. There was considerable delay in the setting up of an organization because of the Ballinger-Pinchot inter-departmental controversy in the Taft administration, but a plan for a "Forestry Unit" in the Indian Service was finally adopted in the Spring of 1910.

During the period from June 15 to late September 1910 the writer, who had entered the Indian Service as a forester on February 25, 1910, visited about a dozen Indian reservations in the far western States with a view to obtaining first hand information regarding the forest resources on Indian lands, observing the methods used for the protection and development of the same, and determining the form of organization that should be established for the management of these forested lands. Possibly the most striking conclusion reached in this hasty view of the situation was that the forests on Indian reservations had suffered less damage from fires than had forests on the public domain and on National Forests. This immunity from excessive fire losses had apparently been due not to more effective methods of fire prevention and control but to the fact that the reservations were less frequently visited by mineral prospectors, hunters and others who were careless in the building and leaving of camp fires or in the setting of fires for the clearing of land or for the exposure of mineral prospects.

The great loss of future values to the Indians through the opening of the reservations to settlers was noted, particularly on the Coeur d'Alene in Idaho and on the Siletz in Oregon. The surplus lands of the Coeur d'Alene had been opened to settlement in the spring of 1910.[38] The Coeur d'Alene Indians had generally been allotted on the rich agricultural lands of the western part of the reservation, some of which bore heavy stands of timber. The more broken forested lands of the eastern and extreme southern part of the reservation had been opened under the homestead laws. The lands had been appraised and classified as agricultural, grazing and timber lands. It appeared to the writer that from the standpoint of the Indians, as well as from that of the United States, the opening of these lands to homestead settlement was unwise. It had been observed that the disposal of the surplus lands on other reservations had not ended the expenditures of funds of the United States for the education and advancement of the Indians. Though then inexperienced in the administration of Indian Affairs, the writer felt very strongly that the retention of these forested lands in a compact unit and the management of the same as a productive forest could have yielded enough average yearly income to pay all expenses connected with the administration of the Coeur d'Alene Indian Agency. Arguments to this effect were strenously combatted by local residents and even by government officials, who maintained that the Indians would never make productive use of the lands, that the opening of the surplus lands and their development would lead to an increase in the value of the lands allotted to the Indians and that the primary object of the Indian administration should be the ending of federal supervision. The Indians themselves were anxious to obtain the funds that would accrue to them through the opening of the lands to entry.

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[38] Exec. Proc., May 22, 1909 (36 Stat. 2494), opening fixed at April 1, 1910 later changed to May 2, 1910. Surplus lands of Flatheads and Spokane opened at same time. See letters of July 16 and August 17, 1910 from Kinney in Ind. Of. Files.

The allotment of the Indians of the Siletz Reservation had been completed many years earlier, with the reservation of a few scattered small tracts for the use of the Indians. The surplus lands had been opened to mineral and homestead entry[39] and, by an act of May 13, 1910 (36 Stat. 367), concerning which the writer had not been informed prior to his visit to Siletz, the Secretary of the Interior had been authorized to sell the five sections of timberland reserved more than ten years before for the use of the Indians. Much of the land allotted and the greater part of that opened to entry was very heavily forested. A homesteader, named Sheffield, who had just fin-

[39] Act Aug. 15, 1894 (28 Stat. 323-325), and Pres. Proc. May 16, 1896 (29 Stat. 866).

ished felling a ten foot spruce tree near his cabin on the west half of the east half of section 30 T. 9 S. R, 10 W., at the time of the writer's visit, declared that a cruiser who examined the allotments of an Indian, named Wilbur, and his daughter comprising the east half of the east half of the same section 30, told him that this 160 acres allotted to father and daughter had 27,000,000 feet of timber upon it. He said the two allotments were sold for $8,000. No opportunity was ever afforded for checking either the apparently extravagant statement as to the amount of timber or as to the alleged inadequate price received. Enough was observed to convince the writer that the allotment of heavily forested lands to Indians was a most decided mistake, for they could neither use them nor sell to advantage their small individual claims. Those who homesteaded the Siletz surplus lands were also at the mercy of speculators and mill owners and could seldom secure prices approaching the real value of their claims. In fact nearly all of those who made entry did so on a purely speculative basis and not for the purpose of establishing a home on the land. The division of ownership through allotment and the opening of surplus lands had destroyed all probability of a unified administration unless the lands were again consolidated under one or several large holdings. It appeared that the possibility of a conservative management of these lands as tribal forest lands had been sacrificed with no adequate compensation to the Indians or to those who settled upon the surplus lands in the hope of securing personal advantage.

On the Quinaielt Reservation in western Washington, the allotment of heavily forested lands was in process in 1910. The allotment work had been going on for several years at a very slow rate and it was conceded that the individual allottees would be as helpless in handling these allotments as were the white homesteaders under similar conditions. Yet the assignment of lands wholly unfit for the home-making purposes contemplated by the general allotment act and similar special acts [40] was continued as a matter of course—illogical and indefensible as the process seemed to be from a conservation standpoint. Four years later the snail-pace allotment at Quinaielt was stopped and the following two years, when funds became available, a cruise of the timber and the making of a topographic map of the reservation was begun with a view to the development of a conservative plan of management. However a decision by a local court, eventually confirmed by the Circuit Court of Appeals and the United States Supreme Court [41] required the resumption in 1924 of the allotment process which finally resulted in the assignment of practically all of the valuable timberlands of the Quinaielt Reservation to individual owners, with great disparity as to the value of individual holdings, in place of the equitable division of income that would have been possible if the timber lands could have been held as tribal resources for the benefit of all of the Indians entitled to share in the reservation values, and with the creation of a condition which made a conservative management of the forest practically impossible.

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[40] Crichton v. Shelton, 33 L. D. 205; see Letter Sec'y Int., Dec. 30, 1895, Comp. P. L. 150; U. S. v. Hermanos, 209 U. S. 337; Swigert v. Baker, 229 U. S. 187.

At the earliest possible date after the return of the writer to the Washington headquarters in the autumn of 1910, attention was given to the preparation of legislation which should correct what were conceived to be serious faults in existing law regarding timber lands on various reservations. As a result, on December 30, 1910, identical letters were addressed to the chairmen of the Committees on Indian Affairs in both the House and the Senate recommending proposed legislation for the conservation of the forest on the Blackfeet reservation. The letter to the chairman of the House Committee and the accompanying draft of legislation read as follows: [42]

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[41] United States v. Tommy Payne, 284 Fed. Rep. 827; 264 U. S. 446, Apr. 4, 1924.

[42] See Kinney memorandum Nov. 9, 1911, Ind. Of. File 96633-1911; *Forestry Quarterly*, X, No. 3 (Ithaca, N. Y., 1912), p. 471; "Indian Timberlands," *Journal of Forestry*, XIX, No. 6, Oct. 1921, p. 618; "Forestry Administration on Indian Reservations," *Journal of Forestry*, XIX, No. 8, Dec. 1921, p. 836; "Forest Policy on Indian Lands," *Journal of Forestry*, XXV, No. 4, Apr. 1927, p. 430; "Administration of Indian Forests," *Journal of Forestry*, XXVIII, No. 8, Dec. 1930, p. 1041.

Department of the Interior
Washington
December 30, 1910

Hon. Charles H. Burke,
Chairman of Committee on Indian Affairs,
House of Representatives.

Sir:

By direction of the President, I have the honor to transmit herewith the draft of a bill amending the Indian Appropriation Act approved March 1, 1907 (34 Stat. L. 1015).

Paragraph 2 on page 1038 of the Act of March 1, 1907 supra, provides for the sale of the timberlands of the Blackfeet Indian Reservation, Montana, as follows:

> 'That lands classified and returned by said Commission as timberland shall be sold and disposed of by the Secretary of the Interior, under sealed bids to the highest bidder for cash at not less than five dollars per acre, under such rules and regulations as he may prescribe: *Provided*, That the said timberlands shall be sold in tracts not exceeding forty acres, with preference right of purchase to actual settlers, including Indian allottees residing in the vicinity, at the highest price bid.'

The timberlands upon this reservation are practically all comprised within a strip from one to seven miles wide and about thirty miles in length situated at the eastern base of very lofty mountains lying within the Glacier National Park. These lands are elevated, rough and of very small agricultural value, because of their elevation and proximity to high mountains the seasons are too short to enable field crops to be matured.

East of these mountains a treeless and almost rainless plain stretches away for hundreds of miles. The production of agricultural crops on this plain will be largely dependent upon irrigation projects. The preservation of the forest at the base of the mountains both as a means of water conservation and as a source of wood supply for the vast treeless areas to the east is a matter of prime importance.

Congress has already appropriated five hundred thousand dollars for the reclamation of irrigable lands within the Blackfeet Reservation, of which amount over three hundred thousand dollars have been expended. The water to be used on large irrigable areas will be taken from streams flowing through or having their sources within the timberlands of the Blackfeet Reservation.

This forest consists largely of lodgepole pine, spruce, white fir and red fir. It is a type that is peculiarly subject to forest fires. The ravages of fires in the past are very evident. The need of preventing fires in the future within this area is imperative.

If this area shall be subdivided and sold in forty acre tracts as is contemplated by the act of March 1, 1907, the protection of this timber from fire and the maintenance of the forest as a water conservator and a source of timber supply for the prospectively large agricultural population on the adjacent open land will be practically impossible.

The proposed legislation submitted herewith would insure a conservation of this timberland until such time as Congress shall determine the final disposition which is to be made of the same.

The Department would be pleased to see the proposed legislation enacted into law.

Very respectfully,
(signed) R. A. Ballinger,
Secretary.

Since the title, the enacting clause and the detailed reference to the previous act of March 1, 1907, as contained in the proposed bill, have no historical significance the same will not be quoted. The essence of the proposed legislation was contained in the brief paragraph that was to be substituted for the authorization of sale that was contained in the act of March 1, 1907, as stated in the second paragraph of the letter above quoted. The proposed modification was as follows:

> That the lands classified and returned by said Commission as timberlands shall be reserved from sale or entry and held as Indian timberlands, subject to all general laws relative to tribal lands on Indian reservations, until further action by Congress.

The legislation proposed for Blackfeet was introduced on January 5, 1911 by Chairman Burke, given the number H. R. 30294, 61st Cong. 3d Sess., and referred to the Committee on Indian Affairs. The state of mind in Congress produced by the long-continued and bitter controversy regarding forestry and conservation matters in general that had occupied the stage from July 1909 to the close of 1911 was not favorable for the enactment of conservation measures requested by the Department of the Interior and the proposed legislation for the maintenance of a forest for the benefit of the Blackfeet Indians was not enacted. However, this did not detract from the soundness of the reasons that the writer presented in the letter of December 30, 1910 for the reservation of the lands from sale in forty acre tracts.

On May 8, 1911 the writer presented to the Indian Office an item of legislation reading as follows:

A Bill

To reserve Indian timber lands for tribal forest reserves and for other purposes.

Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the Secretary of the Interior be and he is hereby authorized to set aside as tribal forest reserves such timber lands of any Indian reservation heretofore authorized to be opened, and not disposed of, or that may hereafter be opened by any Act of Congress, as the said Secretary may deem necessary, for the use and benefit of the Indians, the reserved timber lands to be managed and the timber thereon disposed of under such regulations as he may prescribe.

Sec. 2. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed.

Observation of the vast amount of mature timber on Indian reservations that should be removed to afford an opportunity for an increased growth of the younger and more vigorous trees, and familiarity with the strong sentiment in the Congress and the Department of the Interior that the resources on Indian reservations should be utilized as a means of meeting a part of the expense connected with the administration of Indian Affairs led to the conclusion that large sales of timber from Indian lands should be effected as soon as market conditions were favorable. However, outside of the Lake States there was little demand for stumpage on Indian lands. The lumber industry was at that time slowly recovering from the slump in prices that accompained the economic depression of 1907. The writer was not convinced of the soundness of the view, then being pressed in the Indian Service, that an immediate market " should be found " for the timber on the Flathead Reservation in Montana, on the Colville and Yakima reservations in Washington and on the Klamath and Warm Springs reservations in Oregon. On all of these reservations there were hundreds of millions of feet of timber that could be removed with a decided improvement of the forest from a silvicultural standpoint, but on none of them was the demand sufficient to insure the receipt of the prices that it was believed could be secured as soon as the lumber industry was again " on it feet." It appeared that the most urgent task before the Indian Service was the procurement of legislation that would reverse the practice of opening Indian lands to destructive lumbering and would provide for an efficient protection of these forest resources for future use. The argument used in May 1911 as a justification for the proposed legislation was as follows:[43]

> On many of the larger Indian reservations there are forests of greater or less extent. These forests are in practically every instance so intimately related to the future welfare of both the Indian and the white race, either as a means of protecting watersheds and thus guaranteeing the maintenance of a water supply for irrigation, or as a part of the limited supply of timber for vast areas of open plains or treeless plateaus, soon to be the seat of a large population, that a conservative management of them is an imperative necessity.
>
> If these timber lands shall be thrown open to entry or to sale they will soon be stripped of their timber through the wasteful and destructive lumbering of the small holder who cannot economically cut conservatively and protect his limited holdings from fire, or they will speedily pass into the hands of large lumber companies who, even should they lumber conservatively, will too much monopolize the local timber market.
>
> When, after allotment, a reservation is opened, the Indians are only upon the threshold of economic and moral independence. They must have forest products for the construction of buildings and fences. They must be assured of a permanent and sufficient amount of water where the raising of crops upon their allotments is dependent upon irrigation, as is the case with many of them. Nothing could contribute more directly to their future progress than the maintenance of a timber supply which may be obtained for a reasonable expenditure of labor or cash and the prevention

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[43] Ind. Of. File 44632-1911, Gen. Service 339. See Dec. Comp. of Treasury, Sept. 15, 1910, Ind. Of. File 75319-1910, holding certain expenditures for protection of Indian property permissible from proceeds of timber sales. See Com. Ind. Aff., 1911, p. 19; Ind. Of. File 64655-1910.

of the alternate floods and droughts which would follow a destruction of the forests about the headwaters of streams.

Since it will be many years before the Government can with justice to the Indian and safety to the state withdraw its guiding hand from the affairs of the Indians, the conservation of the timber lands on Indian reservations will afford a source of revenue which may to a considerable extent reduce the annual budget which would otherwise need to be appropriated from national funds for the support of schools and the various means of civilization.

The proposed legislation received the approval of the Commissioner of Indian Affairs but it was never officially submitted to the Congress by the Department. Efforts in subsequent years to arouse interest in general legislation of this character did not meet with a favorable reception and the writer reached the conclusion that general legislation extending the authority of the Secretary of the Interior or the President so as to reserve Indian forests from sale or entry was impracticable.

Section seven of the act of June 25, 1910 authorizing the sale of timber from unallotted Indian lands, had excepted from its provisions the States of Minnesota and Wisconsin. There were forested tribal lands on the Bad River and Lac du Flambeau reservations in Wisconsin in scattered tracts adjacent to the allotted lands from which the timber was being cut under contract with the allottees. The timber on such scattered tracts could be sold and removed only under authority of the act of February 16, 1889 (25 Stat. 673), authorizing the sale of dead timber. As the timber was cut from adjacent allotments the tribal timber was exposed to substantial damage from windthrow and was also subject to an increased fire risk. On the Red Lake reservation in northern Minnesota there was also a large quantity of over-ripe tribal timber exposed to a very great fire risk because of the extensive timber slashings along the south and east borders of the reservation. Sales of burned timber under the act of February 16, 1889 and that of June 7, 1897 (30 Stat. 90) had been made at different times on the Red Lake reservation, or other Minnesota Indian lands, but usually such operations were followed by charges of the improper cutting of live timber. After a sale of 1908 reports stated that live timber had been cut in excessive amounts for logging roads.

Timber was burned on the Bad River, the Lac du Flambeau and the Red Lake reservations in the autumn of 1910. If none of the trees that survived these fires were to be cut, an adequate price could not be obtained for the timber actually killed because of the excessive cost of logging roads to pick up only the dead timber.

To meet the existing situation on these reservations and any other that might arise, the Department of the Interior, under date of December 7, 1911, presented to both houses of Congress a draft of a bill that would amend section seven of the act of June 25, 1910 so that it would except only the Menominee reservation in Wisconsin from which all mature timber could be removed under the act of March 28, 1908 (35 Stat. 51).[44] This proposed legislation was introduced on December 8, 1911 as H. R. 15133, 62d Cong. 2d Sess., with the substance of the Secretary's letter of transmittal incorporated as a preamble to the enacting clause. Senate bill 3570 and House bill 10834 of the same Congress were identical with H. R. 15133 with the whereas clauses omitted. Senate bill 3570 passed the Senate on February 12, 1912 and on the following day was referred to the House Committee on Indian Affairs. On July 26, 1912 the Department again directed the attention of the Chairman of the House Committee to the bill and urged its passage, but the bill did not come to a vote in the House.

Commissioner Leupp had realized the need of specially trained men for a successful administration of the forests on Indian reservations and, having no group of men with technical forestry education in the Indian Service, had sought the aid of the Forest Service in the Department of Agriculture. That Service had responded with alacrity and on January 22, 1908 a " Plan for Cooperation between the Indian Office and the Forest Service " was entered into by James Wilson, Secretary of Agriculture, and James R. Garfield, Secretary of the Interior. This agreement required that the salaries and expenses of all men actually employed in carrying out the agreement, as well as for equipment and supplies, should be paid by the

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[44] Ind. Of. File 105626-1911; Sen Rep. No. 332, Feb. 8, 1911, 62d Cong. 2d Sess.

Indian Service. However, the men employed in forestry work on Indian reservations, whether members of the Forest Service or of the Indian Service, were to " constitute a part of the force of the Forest Service, responsible directly and only thereto." [45]

Very promptly after the signing of this cooperative agreement representatives of the Forest Service were assigned to duty on the Menominee and other reservations and from then until about the middle of July 1909 an effort was made to administer the forestry work on Indian reservations under the terms of the agreement. The Indian Service had no fund or appropriation to use for the salaries and expenses of such employees except the small deductions from the proceeds derived from sales of timber on reservations in Minnesota and Wisconsin and the very limited amount that could be taken from an appropriation for general purposes and contingencies in the entire Indian Service. From the start there were misunderstandings and some friction because of an over-lapping of authority. The arrangement never proved a satisfactory one for either Department and it undoubtedly led to divided responsibility, confusion and inefficiency.[46] The agreement was abrogated on July 17, 1909 by a decision in the Department of the Interior that the Secretary of the Interior could not legally transfer his responsibility for administration to the Secretary of Agriculture or to the subordinates of another Department.[47]

For several years previous to the adoption of the Cooperative Agreement of January 22, 1908 there had been developing a strong conviction on the part of men influential with President Roosevelt that the administration of all forested lands over which the national government exercised any control should be centralized in the rapidly expanding Bureau of Forestry, later known as the Forest Service. The Indian appropriation act approved March 3, 1905 (33 Stat. 1048, 1070) authorized the

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[45] Sen. Doc. No. 719, 61st Cong. 3d Sess., 4, p. 1153; Hearings Com. on Ind. Aff. House of Rep., Sept., 29, 1919, Ser. No. 6, p. 13, 66th Cong. 1st Sess.

[46] Sen. Doc. No. 719, 61st Cong. 3d Sess., 7, pp. 3761, 3830-3847.

[47] Sen. Doc. No. 719, 61st Cong. 3d Sess., 1, pp. 79-80; 4, pp. 1153-1154, 1198.

President to add a part of the Uintah Indian Reservation to the Uintah National Forest and this was done by Executive Order of July 14, 1905 (34 Stat. 3116) with considerable disregard for the rights of the Uintah Indians who received but an insignificant income from the lands during the next thirty years until they were finally compensated for the lands by an act of Congress.[48] An act of May 23, 1908 (35 Stat. 268) created a National Forest from lands that had been ceded by the Chippewa of Minnesota under act of Jan. 14, 1889.[49]

As the term of President Roosevelt drew to a close, there developed a determined disposition to perfect arrangements that would insure the maintenance of the forests on a large number of Indian reservations as productive forests under complete national control. It was no doubt the sincere belief of those charged with the responsibility for the administration of the National Forests that the desired result could be accomplished only by the inclusion of such lands within National Forests. Obviously the Executive had no authority to change the legal status of lands within Indian reservations that had been established by treaty or by act of Congress, but two days before the end of his term President Roosevelt signed eight Executive orders including within contiguous or near-by National Forests approximately two and one-half million acres of forested land on Indian reservations that had been set aside by Executive order. The Indian lands thus attached to National Forests were declared, in official correspondence of the Interior Department, to have a total value of over $23,000,000, but it is believed that this estimate was above the value of the land and timber. Nevertheless, these two and one-half million acres comprised by far the greater part of the merchantable timber on Indian reservations in the State of Arizona, California and New Mexico. The proclamations of March 2, 1909 provided for the enjoyment of certain privileges and income from these lands by the Indians for a period of twenty-five years after the date of the proclamations but at the end of such period all rights, except the use and enjoyment of allotments in severalty made within such additions to the National Forests, were to cease " and thereafter the occupancy and use of the unallotted part of said lands shall in all respects be subject to the laws governing National Forests." [50]

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[48] Act Feb. 13, 1931 (46 Stat. 1092) appropriating $1,217,221.25 or at rate of $1.25 per acre for land attached to National Forest in 1905.

[49] Cf. act of June 27, 1902 (32 Stat. 400, 402); and act June 21, 1906 (34 Stat. 352) regarding Star Island.

Apparently those responsible for the promulgation of these proclamations believed that the President had authority to restore to the status of public lands any lands that had been segregated from the public domain and given the status of an Indian reservation by Executive order. The Executive orders of March 2, 1909 appear to have been prepared in the light of an understanding that the first section of the general allotment act of February 8, 1887 (24 Stat. 388) recognized a right of allotment on the part of the Indians occupying reservations created by Executive order, as well as on reservations established by treaty, or by act of Congress, since each of the executive orders of 1909 provided for the making of such allotments subsequent to the signing of the proclamation attaching the Indian lands to National Forests. If the decision of the Supreme Court of the United States in the case entitled In re Wilson, 140 U. S. 575 was considered, the view must have been taken that whatever rights the Indians had in such lands could be extinguished by the payment for the same by the United States, and that the Executive possessed in large measure the plenary power that had been held by the Supreme Court to exist in the Congress in regard to the final disposition to be made of Indian lands.[51]

The subsequent act of June 25, 1910 (36 Stat. 857) removed whatever question there may have been regarding the beneficial interest of the Indians in the timber on reservations created by Executive order, for section 7 of this act authorized the sale of the timber, under regulations to be prescribed by the Secretary of the Interior, from *any Indian reservation,* except those in the States of Minnesota and Wisconsin, and the use of the proceeds derived from such sales of timber from unallotted lands " for the benefit of the Indians of the reservation " from which the timber was sold. Here was an express legislative recognition of the theory, that had been developing in the twenty-five years preceding 1910, that the Indians really had something more than the mere right of occupancy that had been announced by the Supreme Court in 1823, had been reiterated fifty years later in United States v. Cook, and had formed the basis of the decision of the Attorney General in 1888.[52]

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[50] Proclamations are in 35 Stat. Vol. 2; Fort Apachee, p. 2236; Mescalero, p. 2239; Jicarilla, p. 2240; Navaho and Zuni, p. 2242; Hoopa Valley, p. 2243; San Carlos, p. 2244; Tule River, p. 2249; see 36 Stat. 2746 regarding San Carlos.

[51] Lone Wolf v. U. S., 187 U. S. 566; cf. Holden v. Joy, 17 Wall 211, 84 U. S. 211; Spaulding v. Chandler, 160 U. S. 394; Leavenworth etc. R. R. v. U. S., 92 U. S. 733; 34 Opin. Atty. Gen. 171-192; U. S. v. Mille Lac Indians, 229 U. S. 498.

By letter of July 11, 1911, the Department of Agriculture submitted to the Attorney General the question of whether that Department could sell the timber from unallotted lands of the White Mountain Apache Indian Reservation which had been included within the Sitgreaves National Forest by the President's Proclamation of March 2, 1909. On September 5, 1911 (29 Opin. Atty. Gen. 239) the acting Attorney General substantially held that the Executive Order of March 2, 1909, purporting to attach the Apache Indian lands to the Sitgreaves National Forest, was ineffectual as being beyond the power of the Executive. All the other proclamations of March 2, 1909 stood upon practically the same basis and by Executive orders of February 12, 1912 the forested lands of the eight Indian reservations were declared to be restored to their former status as Indian reservation lands.[53] In this manner doubt as to the legal status of nearly 2,500,000 acres of forested land on Indian reservations, that had been created by the proclamations of March 2, 1909 was finally removed.[54]

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[52] Graham v. McIntosh, 8 Wheaton 543; United States v. Cook, 86 U. S. 591; Dec. Nov. 20, 1888, 19 Opin. Atty. Gen. 194; see Pine River Logging Co. v. U. S. 186 U. S. 279. In U. S. v. Paine Lumber Co., 206 U. S. 467, Supreme Court held Indians had more than a mere right of occupancy.

[53] See Ex. Orders, Ind. Res. Gov. P. Of., 1912, Fort Apache, p. 11; Navaho, p. 22; San Carlos, p. 37; Hoopa, p. 39; Tule River, p. 63; Mescalero 120; Jicarilla, p. 124; Zuni, p. 130.

[54] See memorandum of Assistant Commissioner of Indian Affairs to Secretary of Interior of August 31, 1911, Ind. Of. File.

Section nine of the act of June 25, 1910 (36 Stat. 857) amended section three of the general allotment act of February 8, 1887 so as to authorize the making of allotments by the superintendents in charge of reservations as well as by special allotting agents and reservation agents.

Sections thirteen and fourteen of the act of June 25, 1910 read:

> Sec. 13. That the Secretary of the Interior be, and he is hereby, authorized, in his discretion, to reserve from location entry, sale, allotment, or other appropriation any lands within any Indian reservation, valuable for power or reservoir sites, or which may be necessary for use in connection with any irrigation project heretofore or hereafter to be authorized by Congress: *Provided,* That if no irrigation project shall be authorized prior to the opening of any Indian reservation containing such power or reservoir sites the Secretary of the Interior may, in his discretion, reserve such sites pending future legislation by Congress for their disposition, and he shall report to Congress all reservations made in conformity with this Act.
>
> Sec. 14. That the Secretary of the Interior, after notice and hearing, is hereby authorized to cancel trust patents issued to Indian allottees for allotments within any power or reservoir site and for allotments or such portions of allotments as are located upon or include lands set aside, reserved, or required within any Indian reservation for irrigation purposes under authority of Congress; *Provided,* That any Indian allottee whose allotment shall be so canceled shall be reimbursed for all improvements on his canceled allotment, out of any moneys available for the construction of the irrigation project for which the said power or reservoir site may be set aside: *Provided,* further, That any Indian allottee whose allotment, or part thereof, is so canceled shall be allotted land of equal value within the area subject to irrigation by any such project.[55]

Prior to June 30, 1910 over $5,000,000 had been expended by the United States on irrigation projects of benefit to lands held by the Indians. The values of irrigated lands and of power and reservoir sites on Indian reservations were rapidly increasing and it was considered essential that steps be taken to protect future values in such resources. Large areas for power and reservoir sites were reserved under authority of sections thirteen and fourteen.[56]

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[55] See Act Aug. 1, 1914 (38 Stat. 583) requiring all moneys theretofore or thereafter expended for the irrigation of Indian lands to be reimbursed where the Indians had adequate funds. Federal Power act June 10, 1920 (41 Stat. 1063), Secs. 3, 10 and 17 of which referred to Indian lands.

Section seventeen of the act of June 25, 1910 repealed a part of the act of March 3, 1909 (35 Stat. 781) relating to Indian allotments upon the public domain and amended section one of the act of February 28, 1891 (26 Stat. 794) so as to specifically authorize the President to cause allotments of irrigable land to be made to Indians:

> in such areas as may be for their best interest not to exceed, however, forty acres to any one Indian, and such irrigable land shall be held to be equal in quantity to twice the number of acres of non-irrigable agricultural land and four times the number of acres of non-irrigable grazing land: *Provided*, That the remaining area to which any Indian may be entitled under existing law after he shall have received his portion of irrigable land on the basis of equalization herein established may be allotted to him from non-irrigable agricultural or grazing lands.

Provision was made for allotments in other quantities on reservations where previous agreements with the Indians, providing for greater or lesser areas in allotments, were in existence. Section seventeen also amended section four of the act of February 28, 1891 regarding allotments on the public domain so as to authorize allotments of forty acres of irrigable land, eighty acres of non-irrigable agricultural land, or one hundred sixty acres of non-irrigable grazing land to any one Indian. Section thirty-one of the 1910 act authorized the Secretary of the Interior, in his discretion, to make an allotment within a National Forest to any Indian " occupying, living on, or having improvements on land included within any such national forest, who is not entitled to an allotment on any existing Indian reservation, or for whose tribe no reservation has been provided, or whose reservation was not sufficient to afford an allotment to each member thereof." All applications for allotment on a national forest were to be submitted to the Secretary of Agriculture who should determine whether the land applied for was more valuable for agricultural or grazing purposes than for the timber found thereon.[57]

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[56] See Ind. Of. Files 59862-1908 and 7081-1909, Flathead Res.; cf. 85564-08 re appraisement; 20598-1910, 7608-1911, 20598-1913, Colville Res.; 14325-1910 and 83692-1910, Warmsprings; 5915-1911, 71555-1912 and 61335-1914, Yakima.

The sections of the act of June 25, 1910 not discussed herein were either of special application or did not relate to land status matters.

On the first page of his annual report for 1911 Commissioner Valentine compressed into a few words the philosophy of his administration of Indian Affairs. These words were:

> Luckily the day has gone by when the sink-or-swin policy is the central idea in a great economic and sociological problem like Indian affairs; even more luckily the day has passed when an excess of sentiment could defend its position in robbing any human being of that strengthening process of mind and muscle which comes from bearing heavier and heavier, and often seemingly impossible, loads. In fine, we are working overtime to get the Indians ready. Under the second head comes the problems of how to let go, where Indians in one way or another have grown self-sufficing.

Valentine also expressed strong aversion to the issuance of fee patents (p. 22) saying that:

> In the face of existing evidences of carelessness and incompetence any liberal policy of giving patents in fee would be utterly at cross-purposes with the other efforts of the Government to encourage industry, thrift, and independence.[58]

In his report for 1912 Commissioner Valentine directed attention to another important phase of the Indian land problem. In discussing the irrigation of Indian lands, he said: (p. 6)

> Long before the United States inaugurated its plan for the reclamation of arid lands the Indian service had spent considerable sums for irrigation; but before 1906 appropriations of Congress for this purpose aggregated only $1,356,000 and the work was in-

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[57] See Regulations approved March 4, 1911.

[58] Attention had been vividly directed to the evils of fee patents by the improvident and illegal sales of land at White Earth under the act of June 21, 1906 (34 Stat. 325, 353) removing restriction from mixed bloods. See Com. Ind. Aff., 1911, p. 42.

harmoniously and wastefully conducted through Indian agents and superintendents, with occasional assistance from a trained engineer. In 1902, however, a chief engineer was appointed and irrigation for Indians began to assume definiteness and plan. In 1905 the appropriation was $390,000; in 1911 it had grown to $1,400,000. Since 1907 appropriations have totaled $6,220,000, of which $4,830,000 were made reimbursable to the United States by the Indians when the Indians have become self-supporting upon their lands. Of the appropriation made before 1906, only $75,000 were made reimbursable. In all, 230,000 acres of land have been placed under ditch and are either being irrigated or can be irrigated immediately upon the construction of inexpensive laterals.[59]

Applications were being frequently received by the Indian Service asking for a modification in the classification or appraisement that had been given particular tracts within reservations, that had been opened to entry. By an act of June 6, 1912 (37 Stat. 125) Congress authorized the Secretary of the Interior, to classify, re-classify, appraise, or re-appraise, in such manner as he should deem advisable, the unallotted or otherwise unreserved lands within any reservation opened to settlement and entry. This act greatly facilitated the correction of errors in classification or appraisement, or the meeting of conditions unforseen at the time of the classification or appraisement.[60] Doubt had also arisen as to the use of lands ceded by Indian tribes and opened to settlement but not actually entered. After a careful consideration of this matter the Department of the Interior advised the Commissioner of Indian Affairs by letter of November 27, 1911 that ceded lands which the United States had agreed to dispose of under the homestead laws, but had not actually purchased from the Indians, were still subject to a right of use by the Indians and that any income from grazing or other use of such lands should be expended for the benefit of the Indians.[61]

The first report of Commissioner Cato Sells of Texas, who took the office on June 4, 1913, directed attention to the vast amount of detailed work that had been imposed upon the Indian Service by section one of the act of June 25, 1910. He said: (p. 2)

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[59] On July 15, 1932 there were approximately 190,000 acres of Indian owned land under ditch but not irrigated.

[60] Cf. Ind. Of. File 67693-1919, Daniels case, Flathead.

[61] See Reg. approved by Dept. July 25, 1912. U. S. v. Ash Sheep Co.. 221 Fed. 582 (Mar. 8, 1915) and 229 Fed. 479. Cf. Ind. Of. File 128080-12, 104053-13, Flathead 150 and 114959-17, Flathead.

> It is estimated that under the act of June 25, 1910 (36 Stat. 855) there are now pending at the various agencies throughout the Indian country, awaiting the determination of heirs, about 40,000 heirship cases, which represent inherited lands valued at approximately $60,000,000. There are pending in this office about 1,500 heirship cases on which final action has not been taken.
>
> A large appropriation is needed in order to enable the office to bring this work up to date. When the heirs are determined the inherited lands will be available for sale and the proceeds can be used to improve the allotments of the heirs. Expediting the work of determining the heirs of deceased Indian allottees is one of the urgent necessities of the Indian Service.
>
> The allotting of lands to individual Indians has been continued ever since the enactment of the general allotment act of February 8, 1888 (24 Stat. 388). It is estimated that there have been allotted to 180,000 Indians about 34,000,000 acres and there remain to be allotted about 39,000,000 acres. There are nearly 120,000 unallotted Indians. There has been expended for allotment work heretofore completed about $4,500,000, and it is believed that it will require at least $3,000,000 to complete the allotment work.
>
> I find that there are a large number of the reservations which not only have not yet been allotted but which have not yet been surveyed. The earliest possible completion of the allotment work is desirable, as it is the main chance of perhaps 70 per cent of the Indians to become self-supporting, and this work is also preliminary to the opening of reservations. The settlement of white people in the Indian country will result in very materially increasing the value of the lands retained by the Indians as their allotments, for it will be the means of locating therein free schools, churches, good roads, and other agencies of a modern and progressive community.

Sells emphasized the importance of the work of the Indian Bureau in administering a trust estate valued at nearly one billion dollars and predicted that a large number of Indians in Oklahoma would lose their property and become charges on the local community if probate attorneys were not employed to protect the interests of minors. (p. 6) He also pointed out the danger that Indians would lose valuable water rights through failure to make beneficial use of the same as required by an act of Congress.[62]

An act of February 14, 1913 (37 Stat. 578) modified section two of the act of June 25, 1910 so as to extend the right of making a will to " any person " twenty-one years of age or over having any right, title, or interest in any Indian allotment and to cover the devise of " moneys and other property held in trust." The act of 1910 had restricted the right to Indians who had received allotments. The act of 1913 also provided that the Secretary of the Interior might approve or disapprove a will, either before or after the death of a testator; and even if a will had been approved and fraud were discovered in connection with the making of it the Secretary might cancel his approval of the will any time within one year after the death of the testator, and the property would then descend according to the laws of the State in which it was situated. The amendment still further provided that the approval of a will and the death of the testator did not terminate the trust or restrictive period but the Secretary might cause the land to be sold and the proceeds used for the benefit of the heir or heirs entitled, might remove the restrictions, or might cause a patent in fee to be issued to the devisee or devisees and might pay moneys to the legatee or legatees, in whole or in part, from time to time, or use the same for their benefit. The amendment excepted only the Osage and the members of the Five Civilized Tribes from its application instead of all Indians in Oklahoma as in the original section two. This amendment affords an illustration of the extent to which laws were frequently amended so as to place more discretion in the Secretary of the Interior after the original acts were tried out.[63]

Commissioner Sells was particularly interested in an effort to induce the Indians to use the lands that they held and, in his 1914 report, made special mention of the steps taken to increase the live stock holdings of the Indians. He said: (p. 15)

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[62] See Winters v. United States, 207 U. S. 564; Henkel v. U. S., 237 U. S. 43.

[63] Com. Ind. Aff., 1915, p. 30.

> The constant diminution of grazing land throughout the United States has caused a natural increase in the price of meat, and unquestionably under modern conditions this price will not diminish. It would seem, therefore, that there is no more lucrative or important industrial opportunity open to the Indians having grazing lands than to do away with the old grazing-leasing and grazing-permit system, and in its place go into the business of stock-raising themselves. The Indian is by nature a herdsman and, with but small teaching, should develop into an ideal stock raiser. With this end in view, I have instituted a plan of creating tribal herds upon those reservations having large areas of tribal grazing lands. The original herds purchased are comparatively small, but in a short time, by careful management, should so increase as to properly graze every acre of Indian grazing land. During the year nearly one and one-half million dollars were expended in the purchase of live stock for individuals and as tribal herds and also for male animals for improving the grade of cattle, horses, and sheep already belonging to the Indians.

If Commissioner Sells were informed regarding the efforts that had been made in the seventies to develop herds of live stock on Indian reservations, he apparently felt that the failure to achieve permanent success at that time might be attributed either to unfavorable economic conditions or to a lack of enthusiasm and sound understanding of the business and social problems involved. Nevertheless, there is a striking similarity between the glowing word picture of economic independence for the Indians through the raising of cattle, horses and sheep, as painted by Commissioner Sells in 1914, and that presented thirty-five years earlier by Commissioner Hayt in his report for the year 1879.[64]

In his report for 1915 Commissioner Sells discussed (p. 30) the purchases of land for homeless Indians in California under the acts of June 21, 1906 (34 Stat. 325, 333), April 30, 1908 (37 Stat. 70, 76) and succeeding appropriation acts; and the purchases in Wisconsin and Michigan under the acts of June 30, 1913 (38 Stat. 102) and August 1, 1914 (38 Stat. 607), authorizing the expenditure of $150,000 of reimbursable funds to acquire lands for the Potawatomi.[65] He referred to the decision in the case of the United States vs. First National Bank, 234 U. S. 245, holding that the term mixed-blood, as used in the act of June 21, 1906 removing restrictions from allottees of the White Earth Reservation, covered persons having any identifiable quantum of blood other than Indian blood, and to the success of the government in recovering the land or an additional payment under a number of the 1299 suits that had been instituted on the ground of fraud in the alienation of allotments of alleged mixed-blood White Earth allottees.

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[64] Com. Ind. Aff., 1879, p. xi.

[65] See also act Aug. 1, 1914 (38 Stat. 582) authorizing puchase of land for Camp Verde Indians.

Commissioner Sells maintained his interest in the live stock industry as a means of enabling the Indians to use their lands, which he had so strongly advocated in 1914, and gave considerable space in his 1916 report to the subject of encouragement of agriculture and stock-raising among the Indians through reimbursable appropriations aggregating $1,825,000 in three years. (pp. 27 and 38)

In this report the Commissioner referred to the competency commissions that had been appointed in 1916 by Secretary of the Interior Franklin K. Lane for the purpose of determining which Indians were " fully qualified to care for their own affairs " with a view to the issuance of fee patents to such individuals without awaiting their applications for such patents. The language of the allotment acts was interpreted as authorizing such action whenever the Secretary was convinced that allottees were competent to manage their own property. (p. 49) During the year ending June 30, 1916 fee patents, either upon applications or under the policy stated, were issued for over 220,000 acres of allotted land.

The Indian appropriation act of May 18, 1916 (39 Stat. 123) contained several items of general legislative interest. One of these was a modification of the law regarding the disposal to be made of land after the Secretary of the Interior had determined the heirs of a deceased allottee. The new law (39 Stat. 127) authorized the Secretary of the Interior to cause the inherited lands to be partitioned among the heirs regardless of their competency, with the issuance of fee patents to the competent heirs and trust patents to the others, either respectively, or jointly. Another item (39 Stat. 157) provided for the sale of the timber from " school lands " and " swamp lands " within the Bad River and Lac du Flambeau reservations, the title to which was contested by the State of Wisconsin.[66] Still another item (39 Stat. 137) created the Red Lake Indian Forest from lands within the Red Lake Reservation. This item had been condensed from a special bill and culminated efforts begun in 1913.[67] The item in the 1916 act contained the following significant language:

> That said forest shall be administered by the Secretary of the Interior in accordance with the principles of scientific forestry, with a view to the production of successive timber crops thereon.

Subsequent to the introduction in January, 1915 by Senator Nelson of the bill that had been prepared in the Indian Office several amendments were made either in Committee or while the bill was under discussion. Some of these were inconsistent with the purposes of the proposed legislation. However, the act as passed established the first " Indian Forest " and it aroused hopes that the plan that had been formulated in 1910-1911 might yet be realized.[68]

An act of March 22, 1906 (34 Stat. 80) had provided for the survey and allotment of the diminished Colville Indian Reservation; the classification of the surplus lands as irrigable, grazing, timber, mineral, or arid lands; and the appraisement of all lands except mineral lands. The latter were to be disposed of under the general mining laws of the United States.[69] This act required that upon the completion of such classification and appraisement and the reservation of the lands necessary for agency, school, religious, town site or other public purposes, the lands classified as grazing lands and arid lands should be opened to settlement and entry under the provisions of the homestead laws at not less than their appraised value in addition to the fees and commissions prescribed by law for the disposition of lands of the value of one dollar and twenty-five cents per acre.[70] If any of the lands were susceptible of inclusion in any feasible irrigation project under the reclamation act of June 17, 1902 (32 Stat. 338), the Secretary was authorized to withhold them from disposition under the above provisions and to dispose of them under the said reclamation act with the addition of the charges provided by the said act to the appraised value of the lands as determined at the time of classification. Section five of the act required that the lands classified and appraised as timberlands be disposed of under sealed bids to the highest bidder for cash or at public auction as the Secretary of the Interior might determine. Section three of this act provided that the lands remaining undisposed of at the end of five years from the opening should be sold to the highest bidder at not less than one dollar per acre and that those remaining at the end of ten years be sold to the highest bidder irrespective of price.

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[66] See act Aug. 1, 1914 (38 Stat. 605), Additional allotments, and U. S. v. Stearns Lumber Co., 245 U. S. 436; Lac du Flambeau allotments, May 19, 1924 (43 Stat. 132).

[67] See Ind. Of. File 82919-1914, Red Lake 339; S. 7179, 63d Cong. 3d Sess.; Ind. Of. File 4055-1916, Red Lake; 76457-1914, Red Lake 343.

[68] Ind. Of. File 44632-1911, Gen. Ser. 339; 96633-1911, Blackfeet 339.

[69] See Rep. Geol. Sur., May 2 and July 22, 1913, Ind. Of. File 74628-1911, 45360-1913, Colville 313.

Sections seven and eight of the act of June 25, 1910 (36 Stat. 857), providing for the sale of the timber from the unallotted and allotted lands of any Indian reservation (except lands in Minnesota, Wisconsin and Oklahoma) had been held by the Department to authorize the sale of timber from reservations having special laws authorizing the sale of timber or timberlands provided such special acts were not inconsistent with the general act and there was need for a sale to conserve values for the benefit of the Indians.[71] The writer felt that there was urgent need for a specific reservation from entry or sale of the lands of the Colville Reservation that might be classified as timberlands by the appraisement commisison authorized by the act of March 22, 1906 (34 Stat. 80) and early in the year 1912 he prepared legislation directed to the reservation from sale of "all unallotted lands of the Colville Reservation chiefly valuable for the production of timber and the conservation of water resources." Before this proposed legislation received the approval of the Commissioner of Indian Affairs and of the Secretary of the Interior on May 1, 1912, three other items of desired legislation regarding Colville had been incorporated and the language of the proposed modification of section five of the act of 1906 changed to provide for the reservation of "lands chiefly valuable for the timber." [72]

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[70] Modified June 25, 1910 (36 Stat. 859), Secs. 17 and 30; Act July 22, 1912 (37 Stat. 197), authorized sale to Okanogan for public park of certain area.

[71] See Dept. decision, May 22, 1911, Ind. Of. File 44735-1911. Also Sec. 39, p. 35 of Reg. and Instruc. for Officers in Charge of Forests on Ind. Res. approved June 29, 1911, reissued Feb. 5, 1918. Also Dec. Asst. Comp. Treas. May 28, 1912, Ind. Of. File 55262-1912 holding funds from sale of living timber should be deposited as "Indian Moneys, Proceeds of Labor."

The modified language, which did not come to the attention of the writer until after the introduction of the bill in Congress, was quite unsatisfactory from a forestry standpoint but reflected a viewpoint that obtained for some years in connection with legislation directed to the classification of Indian lands.[73] No action was taken by Congress on the proposed legislation. An identical bill, H. R. 11093, was before the second session of the Sixty-third Congress but met a like fate. After the allotment work was completed the appraisement of the surplus lands provided for in the act of March 22, 1906 was made. Unfortunately the instructions to the appraisement commissioners contained the requirement that they classify as timberlands "all lands chiefly valuable for timber" instead of a requirement that they classify as timberlands those lands which should be found to be primarily adapted to the production of forest growth or that should be reserved as protection forests. As a result tens of thousands of acres that should have been classified as forest land were classified as grazing land because of the low appraised value of the timber at the time of classification, much of it being immature or of alpine or sub-alpine character. After the completion of the classification and appraisement and the submission of a report upon the same in 1915, another effort was made to secure the reservation of all the unallotted lands in thirty-six townships for forest and grazing purposes.[74] This effort was unsuccessful and an act containing the other items for Colville requested in 1912 was passed by Congress and approved August 31, 1916 (39 Stat. 672) without the inclusion of any provision for the reservation from sale of the forested grazing lands of the Colville.

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[72] Ind. Of. File 37087-1910, Colv. 313; Ind. Of. File 104166-1911; Ind. Of. File 47070-1922, re grazing reserve; see also H. R. 24070, 62d Cong. 2d Sess.

[73] See Flathead act April 23, 1904 (33 Stat. 302); Tongue River act June 3, 1926 (44 Stat. 690).

Commissioner Sells strongly favored the reservation of the forest and grazing lands of Colville but there was an extremely urgent demand in the State of Washington, and especially in the counties within which the Colville Reservation was situated, that the surplus lands be opened to settlement. The opening was finally declared by President Wilson by proclamation of May 3, 1916 (39 Stat. 1778). Commissioner Sells had been able to secure the retention of the lands classified as grazing lands in about eight and one-half townships as Indian grazing lands in which entries should not be allowed but forested lands in approximately thirty townships were left in a legal status in which there was a persistent demand for their reclassification as grazing lands under the act of June 6, 1912 (37 Stat. 125) so that they might be open to entry as homestead lands.[75] As the time approached in which the remaining un-entered lands might be sold for one dollar per acre, i. e. five years from the opening to filing on September 5, 1916, the need for legislation to protect the forested areas of Colville became more urgent but efforts in 1920 to secure remedial legislation were ineffective.[76]

For many years there had been a rising tide of discontent, especially among the mixed-blood Indians, against governmental restrictions upon the control of their property. This flame of dissatisfaction was constantly fanned by land speculators, local attorneys and others who hoped to obtain personal profit through the removal of such restrictions. Thousands of whites, who had no ulterior motives, believed that a large number of the Indians, whose lands were held under patents containing restrictions upon alienation, could and should assume the full responsibilities of citizenship, including the payment of taxes. Individual Indians, whose applications for fee patents had been denied by the Department of the Interior, experienced little difficuly in obtaining the assistance of a member of Congress in the pressing of their claims and the ultimate achievement of their purpose. In many instances the urgency with which individual Indians demanded their fee patents was inversely proportional to their competency. Many thoroughly competent individuals realized the advantages that they enjoyed through tax exemption and preferred to have the fiction of incompetency continue. The clamor of the less competent for freedom in the use of their property and the disposition of the more competent to avoid the responsibilities that would follow the assumption of full control over their allotments and the income therefrom, both contributed to the development of a conviction in the public mind that a change in Indian policy was desirable. Strong pressure was exerted upon the Indian Service.

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[74] Ind. Of. File 37087-1910, Memo. Sept. 4, 1915; Ind. Of. File 129729-1915, Colv.

[75] See Ind. Of. File 96172-1917, and report of October 10, 1917.

[76] Ind. Of. File 101523-1920, Colv. 339; File 17097-1921; see also Ind. Of. File 47070-1922 with Memo. of Jan. 10, 1928.

The time for filing on Colville lands which was limited to expire on Sept. 4, 1921, was extended for a five-year period by act of May 9, 1922 (42 Stat. 507) and for an additional five-year period by act of May 17, 1926 (44 Stat. 558).

The experiment in 1916 of issuing fee patents to Indians considered competent had convinced the Department that the policy should be extended and, on April 17, 1917, " A Declaration of Policy " was issued by Commissioner Sells and Secretary Lane. The second and third paragraphs of this declaration were as follows: [77]

> The time has come for discontinuing guardianship over all competent Indians and giving even closer attention to the incompetent that they may more speedily achieve competency. Broadly speaking, a policy of greater liberalism will henceforth prevail in Indian administration to the end that every Indian, as soon as he has been determined to be as competent to transact his own business as the average white man, shall be given full control of this property and have all his lands and moneys turned over to him, after which he will no longer be a ward of the Government.

[77] Com. Ind. Aff., 1917, p. 3.

In line with this policy six rules for the guidance of Indian Service employees were announced. The first three of these rules related to Indian land policy and are accordingly quoted in full below:

> 1. Patents in fee.—To all able-bodied adult Indians of less than one-half Indian blood, there will be given, as far as may be under the law, full and complete control of all their property. Patents in fee shall be issued to all adult Indians of one-half or more Indian blood who may, after careful investigation, be found competent, provided that where deemed advisable patents in fee shall be withheld for not to exceed 40 acres as a home.
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> Indian students, when they are 21 years of age, or over, who complete the full course of instruction in the Government schools, receive diplomas and have demonstrated competence will be so declared.
>
> 2. Sale of lands.—A liberal ruling will be adopted in the matter of passing upon applications for the sale of inherited Indian lands where the applicants retain other lands and the proceeds are to be used to improve the homesteads or for other equally good purposes. A more liberal ruling than has hitherto prevailed will hereafter be followed with regard to the applications of noncompetent Indians for the sale of their lands where they are old and feeble and need the proceeds for their support.
>
> 3. Certificates of competency.—The rules which are made to apply in the granting of patents in fee and the sale of lands will be made equally applicable in the matter of issuing certificates of competency.

Rules 4, 5 and 6 provided, respectively, for an unrestricted control of their individual moneys to those given their fee patents or certificates of competency, and for a liberal use of such funds of the old, indigent or invalid; for a speedy distribution of the pro-rata shares of all Indians in tribal property; and for the elimination from Government maintained schools of Indian children whose parents were able to pay for their education and who had school facilities near their homes. It was announced that such children would not thereafter be enrolled in schools supported by Government gratuity appropriations except on the payment of the actual cost of their education.

These rules were followed by a statement as to the future of the Indian race so similar in its optimism to declarations made by other commissioners that it will be helpful to quote another paragraph which reads as follows:

> This is a new and far-reaching declaration of policy. It means the dawn of a new era in Indian administration. It means that the competent Indian will no longer be treated as half-ward and half-citizen. It means reduced appropriations by the Government and more self-respect and independence for the Indian. It means the ultimate absorption of the Indian race into the body politic of the Nation. It means, in short, the beginning of the end of the Indian problem.

In his report for 1918 Commissioner Sells again discussed the " Policy Patents," saying (p. 23)

> Since the passage of the act of May 8, 1906 (34 Stat. 182) and modifying acts, there have been issued 16,500 patents in fee, covering 2,086,722 acres of land. Since April 17, 1917, the date when the declaration of policy became effective, there have been issued 6,456 patents in fee, involving 987,844 acres. In other words, the number of acres patented since the declaration of the ' new policy,' less than eighteen months, nearly equals the area patented during the preceding ten years, and the number of patentees is nearly two-thirds of the number to whom patents have been issued during the 10 preceding years.

While Secretary Lane was warmly urging the policy of loosening the control of the government over the land and other property of individual Indians, Commissioner Sells was ardently advocating the provision of additional lands for certain tribes, particularly the Papago. The addition of large areas to the Papago reservation by Executive orders of January 14, 1916 and February 1, 1917 had aroused considerable opposition to the enlargement of Indian reservations by this method and an item in the Indian appropriation act of May 25, 1918 (40 Stat. 561, 570) provided that further additions by Executive order should not be made in Arizona and New Mexico. Section 27 of the appropriation act of June 30, 1919 (41 Stat. 3, 34) made this prohibition general as to all States.[78]

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[78] For Papago Exec. orders see Kappler, IV, pp. 1005 and 1008. See similar act Mar. 3, 1927 (44 Stat. 1349) and June 14, 1934 regarding Navajo area. (48 Stat. 960)

The Sells report for 1919 claimed credit for the issuance of more fee patents during the three-year period ending June 30, 1919 than had been issued in the ten years from 1906 to 1916.[79] The administration seemed fully convinced that the policy of removing restrictions from Indian lands as rapidly as possible was highly desirable from the national standpoint and beneficial to the Indians.

On September 30, 1920 Commissioner Sells submitted his eighth and last annual report. It contained no discussion of primary interest regarding the status of Indian lands. Unusually full statistical tables were presented but there were serious discrepancies in them. A table that was apparently prepared in the Land Division of the Indian Office stated that the Indian population of the United States in 1920 was 310,739 of whom 175,433 had been allotted and 135,306 had not received allotments of land in severalty.[80] Of those allotted 55,633 still held their lands under trust patents or restricted fee patents, 2,910 had received patents in fee for a part of their allotments, 1054 of whom were in Oklahoma, and 116,890 had received patents in fee for their entire allotments, of whom 102,924 were in Oklahoma.[81] Many Indians had received more than one allotment and this may account for the fact that in table 6 of the 1920 report the total number of allotments is given as 226,348.[82] The total acreage allotted was given as 37,158,655 and that unallotted as 35,501,661. Of the allotted lands 1,261,586 acres were reported to be without the boundaries of Indian reservations.

This report recorded the fact that the number of acres of land allotted during successive fiscal years had declined in an irregular manner after the year 1910, the peak allotment activity having occurred during the five-year period from 1906 to

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[79] Com. Ind. Aff., 1919, p. 1; 1920, p. 49 showing 17,176 patents in four years. See Ind. Of. Circ., Mar. 7, 1919 modifying policy to some extent. In November, 1934 the writer was told that only five Indians of the Standing Rock Reservation still held their fee-patented lands. About 1,000 fee patents had been issued to Standing Rock allottees.

[80] Com. Ind. Aff., 1920, p. 73.

[81] *Ibid.*, p. 75.

[82] *Ibid.*, p. 82.

1910 inclusive.[83] On the contrary the number of fee patents issued rose sharply after the initiation of the policy of greater freedom to the Indians in the control of their property, the number of applications approved in each of the years 1918 and 1919 being double the number approved in 1917 and almost four times the number approved in any one year previous to 1917.[84] In 1920 the number approved was fifty percent above the record for 1918 or 1919, totalling 6,426 and involving nearly 1,000,000 acres in a single year. In 1920 the restrictions upon alienation of 3,000 allotments, with an area of over 250,000 acres were removed.[85]

During the eighteen years from 1903 to 1920 inclusive, inherited Indian land to the extent of 1,372,826 acres had been sold for which there had been received $24,189,226. About one-eighth of this acreage had been sold in the one year, 1920, for approximately one-sixth of the total amount. Between the years 1908 and 1920 there had been sold 719,958 arces of land belonging to noncompetent Indians for a total of $13,509,387. Approximately one-fifth of this acreage had been sold in 1920 for nearly one-fourth of the total amount received. The price received for Indian lands sold in 1920 amounted to $7,574,375, an average of over $15. per acre. The greater demand for land during the boom period following the European War will account largely for these increased sales.[86]

On April 1, 1921 Charles H. Burke of South Dakota became Commissioner of Indian Affairs. Mr. Burke had formerly been Chairman of the Committee on Indian Affairs in the House of Representatives and was personally familiar with most phases of Indian administration. Edgar B. Meritt, who had been Assistant Commissioner during the previous administration, retained this position under Commissioner Burke. The most important statement respecting Indian lands matters recorded in the annual report for the year 1921 was the announcement that the practice of issuing fee patents to Indians without application therefor, but merely upon the report of a commission that the Indian was considered competent, had been discontinued and that a formal application for a fee patent and satisfactory proof of competency would be required thereafter. (p. 23) In his report for 1922 Commissioner Burke reiterated the intention of pursuing a stricter policy regarding the issuance of fee patents and the removal of restrictions on the alienation of land. (p. 15)

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[83] *Ibid.*, p. 168; cf. 1916, p. 97.

[84] *Ibid.*, p. 172.

[85] *Ibid.*, p. 173.

[86] *Ibid.*, p. 169.

The demand for the opening of Indian reservation lands to entry and settlement by whites that had existed for many decades, and had been particularly urgent from 1900 to 1918, seemed to have been largely satisfied by 1920, principally because of the slackening of profits from agricultural enterprise and the realization that the lands left in Indian reservations were generally semi-arid and comparatively valueless for agricultural purposes. About this time there also developed a demand from field employees of the Indian Service and from the Indians that the unallotted lands of reservations be allotted as additional grazing allotments and to the children born after the completion of the previous allotments. As a result of the arguments thus presented a number of acts were passed during the decade beginning in 1920 under which several million acres of land were allotted[87] While several of these acts were passed prior to the time that Mr. Burke became Commissioner, the greater part of the allotment work was done during his term of office.

An act of May 18, 1916 (39 Stat. 128) had permitted the leasing for a period not exceeding ten years of allotted lands which were arid but susceptible of irrigation provided the allottees by reason of age or other disability could not personally

[87] Fort Peck act Feb. 14, 1920 (41 Stat. 408, 421). Children, act Aug. 1, 1914 (38 Stat. 593).
Fort Berthold act Feb. 14, 1920 (41 Stat. 408).
Flathead act Feb. 25, 1920 (41 Stat. 452).
Crow act June 4, 1920 (41 Stat. 751); cf. Act May 19, 1926 (44 Stat. 566); Act May 2, 1928 (45 Stat. 482).
Fort Belknap act Mar. 3, 1921 (41 Stat. 1355).
Lac du Flambeau act May 19, 1924 (41 Stat. 132), no action taken.
Eastern Cherokee act June 4, 1924 (43 Stat. 376), no action taken.
Northern Cheyenne act June 3, 1926 (44 Stat. 690).
Wind River act May 21, 1928 (45 Stat. 617), no action taken.

occupy or improve the allotments. An act of March 3, 1921 (41 Stat. 1232) authorized the leasing of restricted allotments by the allottee or his heirs, subject only to the approval of the local superintendent. This provision made it possible to relieve the Washington office of much detail in certain respects but also resulted in a decided lack of uniformity of practice and considerable confusion in the field. An act of May 26, 1926 (44 Stat. Pt. 2, 659) authorized competent Indians of the Crow Reservation to lease their own allotments and those of their minor children for farming and grazing purposes without supervision. This act allowed adults who had not been declared competent to lease only with the approval of the superintendent. The allotments of minors who were orphans might be leased by the superintendent. All leases were limited to a period of five years.[88] By act of July 3, 1926 (44 Stat. Pt. 2, p. 894) Congress authorized the Secretary of the Interior to lease the unallotted irrigable lands on any Indian reservation for farming purposes for not to exceed ten-year periods with the consent of the tribal council, business committee, or other authorized body representative of the Indians.

Section 26 of an act of June 30, 1919 (41 Stat. 31) had authorized the Secretary of the Interior to lease for mining of metalliferous minerals the unallotted lands within any Indian reservation in the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, and Wyoming. The length of the term of such leases was left to the discretion of the Secretary of the Interior, but the leases were to be irrevocable except for breach of their terms by the leassee. On March 3, 1927 (44 Stat. Pt. 2, p. 1347) the making of oil and gas leases on unallotted lands within reservations created by Executive order was first authorized, with a recognition of the right of the Indians to the proceeds of such leases. The act of June 25, 1910 (36 Stat. 857) had recognized the interest of the Indians in the forest resources of Executive order reservations and thus had dealt a blow to the theory that the Indians held a title to such reservations substantially inferior to that held in reservations established by treaty. The act of March 3, 1927 carried the principle a step farther and from 1927 onward the right of the Indians to the beneficial use of all resources within the boundaries of an Executive-order reservation has been recognized.[89]

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[88] See an act March 3, 1927 (44 Stat. Pt. 2, p. 1366) forbidding the making of a farming lease at Crow more than 18 month prior to expiration of previous lease, or a grazing lease over 1 year before expiration of lease.

Other than a reaction against the policy of removing restrictions as to the sale of allotments, no change in land policy of general application was advocated by Commissioner Burke during his record term of eight years and three months. However, throughout these years a steady, earnest effort was made to promote the advancement of the Indians along educational and economic lines. Early in the twenties there was a marked recession in the price of live stock that resulted in a loss of the greater part of the advance that had been made by the Indians during the five years preceding 1920.[90] Large areas of irrigable land for which water had been provided remained unused by the Indians.[91] During this administration large sales of timber were made on various reservations at record prices: [92] and almost fabulous values were realized from oil wells on lands of the Osage and Five Civilized Tribes [93] and from lead and zinc on certain Quapaw allotments.[94]

To a considerable extent throughout his term of office and especially during the latter years, the administration of Comsioner Burke was subjected to criticism as harsh and unrestrained as that visited upon any of the preceding administrations. It was frequently asserted that the funds of the Indians were being dissipated and provision was made in an act of May 29, 1908 (45 Stat. 887) for an investigation by the General Accounting Office of the funds belonging to Indians and the manner in which they were being administered. The report of the Comptroller General of the United States, J. R. McCarl, in compliance with this legislation, on February 28, 1929, was published as Senate Document No. 263, 70th Congress, 2d Session. This report showed that the various tribes had slightly more than $25,000,000 in tribal funds, while the individual members of the tribes had, under the general supervision of the Federal Government, funds amounting to slightly less than $100,000,000. The report contained many pertinent observations as to the manner in which Indian funds had been administered, including statements as to unwise or unauthorized use of funds. However, it did not disclose any serious mis-application of funds and, taken as a whole, the report must be considered as a refutation of allegations that the funds of the Indians were being recklessly handled by the Indian Service.

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[89] See 34 Op. Atty. Gen. 171, decided, 1924, Stone re Gen. Leasing act. See act of June 2, 1924 (43 Stat. 253) conferring citizenship upon all noncitizen Indians born within the territorial limits of the United States.

[90] Com. Ind. Aff., 1921, p. 12; 1922, p. 9.

[91] Com. Ind. Aff., 1924, p. 16; 1925, p. 20; 1926, p. 21.

[92] *Ibid.*, 1923, p. 19; 1924, p. 22; 1925, p. 26; 1926, p. 20.

[93] *Ibid.*, 1925, p. 17; 1926, p. 12; 1927, p. 14; 1928, p. 27.

[94] *Ibid.*, 1925, p. 29; 1927, p. 15; 1928, p. 28.

As an incident to this investigation, "a careful analysis was made to determine the extent of loss, if any, and the reason therefor" at the Menominee Indian Mills at Neopit, Wisconsin, "it having been called to the attention of the General Accounting Office that the mill was operating at a loss." This logging and milling operation, comprising the largest single industrial enterprise ever undertaken by the Indian Service, had been started under the supervision of the Forest Service of the Department of Agriculture in 1908 in accordance with the provisions of the act of March 28, 1908 (35 Stat. 51). In August 1909 all connection of the Forest Service with the project, other than the designation of the trees to be cut, had ended, except that the man who had been selected by the Forest Service, as Manager, remained in charge for some months. Thereafter the operation was conducted as an Indian Service activity.

Over $1,000,000 of the capital assets of the Menominee Indians were invested in the sawmill, planing mill, lumber yard, logging facilities, dwellings, water supply, sewer system, streets, sidewalks, electric lighting plant and other accessories of a modern sawmill town at Neopit. During the first two years of operation the enterprise suffered a loss of over $278,000, due largely to conditions that obtained prior to March 28, 1908, the effects of which neither the Forest Service nor the Indian Service seemed able to prevent. However, the Comptroller

General found that during the entire period of twenty-one years from 1908 to 1928, inclusive, the Neopit enterprise had not only realized a stumpage income of $1,858,392.19 but had also made a profit, over and above such stumpage (which was computed at rates higher than those charged at commercial mills in the region), in the amount of $1,624,138.81. The investigators also found (p. 113) that, during the twenty-one year period, the Indians had received wages, while working on the operation, amounting to $1,500,000. The creation of an opportunity to earn wages had been presented as one of the main objects of the act of March 28, 1908.

On July 1, 1929 Charles J. Rhoads of Pennsylvania became Commissioner of Indian Affairs and J. Henry Scattergood of the same State became Assistant Commissioner. Both Mr. Rhoads and Mr. Scattergood had previously been closely connected with philanthropic enterprises but neither had before held federal offices. They entered upon their duties in the Indian Service with great interest but with a conservatism that reflected their affiliation with the Society of Friends. Their policy was one of diligent inquiry regarding all suggested reforms but cautious effort to avoid the adoption of methods or plans that would sacrifice any of the progress that had been made in the advancement of the Indians. Their first report, issued in the autumn of 1929, contained no important statement regarding Indian land policy.

The report for 1930 signed by both Rhoads and Scattergood referred to the purchase of nearly 139,000 acres for the Navaho Indians from tribal funds at a cost of approximately $218,000. (p. 16) These lands were purchased under authority of acts of May 29, 1928 (45 Stat. 899) and March 4, 1929 (45 Stat. 1569) which contemplated an extension and consolidation of ownership of lands within the areas that the Navaho had been accustomed to use for grazing purposes (Cf. 47 Stat. 96).

This report summarized the efforts that had been made during the three preceding years to secure legislation giving to forested lands on Indian reservations a definite legal status as "Indian Forests," saying: (p. 18)

> At the first session of the Seventy-first Congress the Senate Committee on Indian Affairs reported favorably on bills for the creation of the Colville Indian Forest and the Klamath Indian Forest. The Klamath bill passed the Senate, but the Colville bill was returned to the committee. Neither bill was acted upon in the House of Representatives. At the second session of the Seventy-second Congress slightly modified bills as to the Colville and Klamath and similar bills for the creation of the Warm Springs and Yakima Indian Forests were suggested by the Interior Department. All four bills were introduced in both the House of Representatives and the Senate. The Yakima bill was favorably reported by the House Indian Committee and was passed on June 30, 1930. The Yakima Indians have indorsed the proposed legislation. The Colville Indians have also expressed their approval of the creation of the Colville Indian Forest, but the approval of the Klamath and Warm Springs Indians has not been obtained. It is believed that their approval will be expressed when the members of these tribes come to understand the purpose of the bills. Legislation of this character is directed to the conservation of resources that may be made to yield a continuous income to the Indians and at the same time contribute to the welfare of the Nation as a whole. It is hoped that before the end of the Seventy-second Congress these four bills and similar ones regarding other Indian reservations, that will be suggested by the department will be enacted into law. The definite establishment of a fixed forest land status for approximately 6,000,000 acres of Indian lands would contribute materially to the successful management of these forests and would make a distinctive step forward in the conservation of national resources.

There is an inaccuracy in the statement quoted above for which the writer must acknowledge responsibility. The bills providing for the maintenance of forested land of the Colville and Klamath reservations as "Indian Forests" were introduced by request of the Department of the Interior at the first session of the Seventieth Congress while Mr. Burke was Commissioner.[95] Senate bill No. 2707, providing for the classification of the lands of the Klamath Reservation and the maintenance as an "Indian Forest" of the lands classified "as chiefly valuable for the production of timber or the incidental purpose of water conservation" was reported favorably, without amendment, by the Senate Committee on Indian Affairs and passed by the Senate on February 24, 1928.[96] On February 28, 1928 this bill was referred to the Committee on Indian Affairs in the House of Representatives but was not reported upon by this committee.[97] The bill regarding Colville was introduced February 23, 1928 as Senate Bill 3354 [98] and reported favorably without amendment, on March 10, 1928.[99] The bill was reached on the calendar of March 20, 1928 but was recommitted on request of the Junior Senator from Washington.[100] It was not reported out of the Senate Committee again.

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[95] See Departmental letter of Feb. 17, 1928 to Chairman of Senate Committee and that of Feb. 18, 1928 to Chairman of House Committee.

Neither the Klamath bill nor the Colville bill was before the first session of the Seventy-first Congress. Slightly modified bills were presented at the second session of the Seventy-first Congress by request of the Department.[101] The bills regarding Klamath before this Congress were S. 2490 and H. R. 6863; those regarding Colville were S. 2489 and H. R. 6865. None of these bills were reported out of committee. The Colville Indians at a general council of February 17, 1930 requested the enactment of the proposed legislation, but the Klamaths declined to approve.

Similar bills were suggested by the Department of the Interior and introduced at the second session of the Seventy-first Congress for the creation of " Indian Forests " on the Warm Springs and Yakima reservations. The bills regarding Warm Springs were S. 2488 and H. R. 6864; [102] and those regarding Yakima were S. 3166 and H. R. 8529.[103] At a general council of February 13, 1930 the Yakima Indians expressed their ap-

[96] Senate Rep. No. 308, Feb. 15, 1928; Cong. Rec., 70th Cong. 1st Sess., pp. 2997 and 3515; Ind. Off. File, 2465-1928, Klamath 339; see legislation previously proposed, Ind. Off. File 16377-1926 and cf. Ind. Off. File 121917-1915 containing letter Mar. 1, 1915.

[97] Cong. Rec., 70th Cong. 1st Sess., p. 3705.

[98] *Ibid.*, p. 3417; see Ind. Off. File 101523-1920, Colville 339.

[99] Sen. Rep. No. 515, 70th Cong. 1st Sess.; Cong. Rec. 4453, 70th Cong. 1st Sess.

[100] Cong. Rec., 70th Cong. 1st Sess., pp. 5041 and 5236.

[101] Ind. Of. Files 101523-1920, Colville 339; 2465-1928, Klamath 339.

[102] Ind. Of. File 54514-1929, Warmspring 339.

[103] *Ibid.*, 1848-1930, Yakima 339.

proval but the Warm Springs Indian voted against accepting the legislation because of a fear that their action would militate against a claim that they had presented as to the western and northern boundaries of the reservation. The Yakima bill, as amended to specify that Indians must be employed in administration of the forest, passed the House on June 23, 1930 but never came to a vote in the Senate. The Yakima bills were re-introduced at the first session of the Seventy-second Congress as S. 2518 and H. R. 6694 but no action was taken on the proposed legislation either in the Senate or the House.[104]

Being greatly interested in the enactment of legislation of this character to insure the continuous conservation of forests on Indian lands, the writer attempted in every legitimate manner to interest foresters, lumbermen and others in the proposed "Indian Forests."[105] A statement of Forestry Policy, adopted by the Board of Directors of the National Lumber Manufacturers Association at Longview, Wash., on August 8, 1929 favored maintaining Indian timberlands on a sustained yield basis but did not specifically indorse the creation of "Indian Forests." In response to a suggestion to the resolutions committee at the annual meeting of the American Forestry Association, held in Minneapolis, Minn., on April 29-30, 1930 a resolution was recommended and adopted indorsing the establishment of "Indian Forests;[106] and at the thirtieth annual meeting of the Society of American Foresters held at Washington, D. C. on December 29-31, 1930 similar action was taken.[107]

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[104] Under authority of act of Dec. 21, 1904 (33 Stat. 595) and through the good judgment of Mr. F. X. Salzman, Chairman of the Appraisement Commission, about 337,000 acres of Yakima timberlands had been set aside as a tribal forest and grazing reserve, Ind. Of. File 7003-1909, Yakima 307.4. However, there were later requests for the opening of Yakima surplus lands, Ind. Of. File 57213-1929 and danger that the forest reserve be broken. Cf. Ind. Of. File 99347-1907, Yakima.

[105] *Journal of Forestry,* XXVIII, No. 8, Dec. 1930, p. 1048; *Outdoor America,* August, 1930.

[106] *American Forests and Forest Life,* May 1930; see also editorial in issue of April, 1930.

[107] *Journal of Forestry*, XXIX, No. 2, Feb. 1931, p. 281; also issue of Feb. 1933, XXXI, No. 2, pp. 135-136.

An act of June 3, 1926 (44 Stat. 690) had provided for the classification of the lands within the Tongue River Reservation in Montana as agricultural, grazing and timberlands and the allotment of the agricultural and grazing lands in areas not exceeding 160 acres to any individual. The act provided for the reservation of the timberlands for the benefit of the tribe except that any Indian occupying, at the time of the approval of the act, any legal sub-division classifiable as timberland, should have the right to select such land for allotment purposes. A schedule of classification was submitted on July 31, 1929 showing slightly over 48,000 acres of timberland, but investigation disclosed that the classification of timberlands had not been based on sound principles and a reexamination of the forested lands was directed by Commissioner Rhoads in a letter of March 7, 1930 approved by the Department on March 8, 1930.[108] Since the act of 1926 specifically stated that the lands to be classified as timberlands must be " lands chiefly valuable for the timber thereon," the classifiers could not be given appropriate instructions to classify as timberlands the " lands chiefly valuable for the production of forest crops." However, a careful examination of the lands on the basis required by the act of 1926 resulted in the classification of approximately 90,000 acres as timberlands, thus saving about 40,000 acres from private appropriation.

The Rhoads and Scattergood report for 1931 again referred to the purchase of lands for the Navahos and to an exchange of lands with the Santa Fe Railroad in the Eastern Navaho district so as to consolidate ownership. The purpose of consummating still larger purchases was expressed. (p. 30) Reference was made to the provision for an addition of approximately 23,000 acres to the Western Navaho Reservation under an act of May 23, 1930 (46 Stat. 378) and its amendment of Feb. 21, 1931 (46 Stat. 1204); and to the acquisition under an act of February 21, 1931 (46 Stat. 1202) of a six-mile strip of privately owned lands that had previously separated two parts of the Papago Reservation. (p. 31) As an indication of the drift of thought away from allotment policy, there should be noted a provision in this act that the lands to be acquired for the Papago should not be subject to allotment.

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[108] Ind. Of. File 34711-1929, Tongue River, 313.

The 1931 report discussed the efforts that were being made to forestall further alienation of Indian allotments because of the issuance of "Policy Fee Patents." (p. 38) An act of February 26, 1927 (44 Stat. 1247) had authorized the concellation of any fee patent that had been issued without application for the same by the allottee provided the Indian allottee had neither sold nor mortgaged any part of the land so as to make the fee patent effective beyond recall. An act of February 21, 1931 (46 Stat. 1205) authorized the cancellation of such fee patents so far as unsold portions of an allotment were concerned, or as to the whole allotment if all mortgages upon the same had been released. Commissioner Rhoads stated that the greater part of those to whom fee patents had been issued, without application, had lost their allotments through mortgage foreclosure, or tax sales. (See U. S. v. Benewah and Kootenai Cos. 290 U. S. 628 and Morrow v. U. S. 243 Fed. 854)

This report also dwelt upon the efforts that were being made to encourage the Indians in agricultural and stock-raising activities. In a re-organization of the Indian Bureau, a Director of Agricultural Extension and Industry had been appointed and a determined effort was being made to introduce improved methods of farm and ranch management among the Indians. On April 15, 1930 the responsibility for the administration of grazing activities on Indian lands had been assigned to the Forestry Branch of the Indian Service. The plan formulated in 1930 for a more efficient control over the use of Indian grazing lands with a view to an increase of income where the range was not completely utilized, and the regulation of use where improper methods were resulting in serious depletion of the range and destructive erosion, was again indorsed as an effective contribution to the policy of conservation of natural resources that had been announced by President Hoover.

The fourth and last report of Commissioner Rhoads, issued in the autumn of 1932, contained no outstanding recommendation on land policy. However, like previous reports, it recorded the consistent effort of the Indian Service to conserve Indian land holdings and to expand them wherever additional land seemed essential to the future welfare of the Indians. The report stated that nearly 258,000 acres had been purchased for the Navaho Indians at a cost of approximately $456,000 and that over 460,000 acres of privately owned land had been leased for the Navaho at an annual rental of $13,600. Other large purchases and exchanges were said to be contemplated.[109]

The last Rhoads report discussed the success of efforts to relieve the Indians from reimbursable charges for irrigation projects, road and bridge construction and other expenditures. (p. 18) From an early period acts providing for the survey and allotment of Indian reservations had generally provided that the cost of such survey and allotment be paid from Indian funds and, subsequent to 1906, acts providing for the construction of irrigation projects on Indian lands quite generally required a reimbursement from Indian funds if tribal funds were not available when the work was done. Later there came a realization that it was not just that Indians who were not benefitted should pay a part of the cost of irrigating lands of other members of the tribe and the act of August 1, 1914 (38 Stat. 583) required that the cost of such projects be assessed against the lands benefitted.[110] Subsequent to 1915 a large number of acts were passed providing for the construction of roads and bridges on Indian lands and making the

[109] See act Mar. 3, 1921 (41 Stat. 1225, 1239), Santa Fe Exchanges; Act Feb. 14, 1931 (46 Stat. 1122), reimbursable appropriation for land purchases.

See Act March 2, 1934 (48 Stat. 362, 367) appropriating $50,000 for purchase of land and water rights, or lease of same, pending purchase; and Deficiency Act June 19, 1934 (48 Stat. 1021, 1033) appropriating $481,879.38 (reimbursable) for purchase of land and water rights as authorized by Act June 14, 1934 (48 Stat. 960).

[110] Cf. Crow act May 26, 1926 (44 Stat. Pt. 2, p. 660).

Mar. 4, 1923 (42 Stat. 1539); Mar. 3, 1926 (44 Stat. 174); Mar. 26, 1930 (46 Stat. 127), et al re Navajo Reservation.

Act May 25, 1918 (40 Stat. 576), et al Mescalero.

Act June 5, 1924 (43 Stat. 413), Cochiti and San Juan bridge.

cost reimbursable from Indian tribal funds.[111] As the years passed the demand that the cost of Indian administration be partly met from Indian funds became more insistent,[112] and finally there was incorporated in the Indian appropriation act of February 14, 1920 (41 Stat. 415) a requirement that a sufficient amount be collected from lessees or purchasers of Indian lands or timber, or be deducted from the proceeds of leases or sales, to cover the cost of accomplishing such leases or sales and that these amounts be covered into the United States Treasury as Miscellaneous Receipts.[113] Subsequently the language of the annual appropriation item authorizing expenditures for the care and protection of forests on Indian lands was modified to specifically provide that such appropriation should be available on any reservation only to the extent that the income from the forest was insufficient to cover the expenses of protection and administration.[114]

However, the injustice of some of these charges was strongly pressed and, in recognition of the rights of the Indians, an act of July 1, 1932 (47 Stat. 564) directed the Secretary of the Interior to adjust or eliminate reimbursable charges existing as debts against individual Indians or tribes in such manner as should be equitable in consideration of all the circumstances under which the charges were made. This act cancelled all uncollected reimbursable charges on Indian lands imposed by the act of February 14, 1920 (41 Stat. 409). Under authority of this act over $12,000,000 of reimbursable charges were later cancelled.[115]

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[111] See act May 18, 1916 (39 Stat. 158), Red Cliff; Mar. 2, 1917 (39 Stat. 975); May 25, 1918 (40 Stat. 520); Feb. 14, 1920 (41 Stat. 417); Mar. 4, 1923 (42 Stat. 1539); Mar. 3, 1926 (44 Stat. 174); Mar. 26, 1930 (46 Stat. 127, et al re Navajo Reservation.

[112] See Hearing, Com. Ind. Aff., fiscal year 1920, 66th Cong. 1st Sess., Serial No. 6, p. 30 *et seq.*

[113] See House Hearings, fiscal year 1921, pp. 63, 151, 154; and fiscal year 1922, 66th Cong. 1st Sess., pp. 106-108. Gov. P. Of. 1921.

[114] See act Jan. 12, 1927 (44 Stat. Pt. 2, p. 934, 942); and subsequent App. acts; Deficiency act Feb. 6, 1931 (46 Stat. 1070) with same limitation. Cf. 46 Stat. 1566.

[115] See H. R. Doc. No. 501, 72d Cong. 2d Sess.; H. R. Doc. 475, 72d Cong. 2d Sess.; and letter Dec. 1, 1934 from Sec. Int. to Pres. Senate, Ind. Of. File 8027-28 Gen'l Ser. 013.

The last Rhoads report presented the interesting information that during the year ending June 30, 1932 over 25,000 acres of land had been purchased from Indians by, or for other Indians at a total exchange value of over $175,000. (p. 25) Most of these land exchanges were within the Fort Berthold Reservation and were made possible by the distribution among these Indians of the $1,970,259.66 awarded to this tribe on April 7, 1930 by a decision of the Court of Claims.

In accordance with the urgent recommendation of Commissioner Rhoads, an act of March 1, 1933 (47 Stat. 1418) restored to the Navaho Indians the large area between the San Juan River and the southern border of Utah, known as the " Navajo Strip." Efforts to secure the addition to the Zuni Reservation of a rather large area of forest and grazing land, lying directly south of the reservation and within a national forest, were not successful. However, the proposal was advanced to a point where later favorable action seemed assured.

For a number of years prior to 1930 representatives of the Forestry Branch of the Indian Service had discussed the desirability of acquiring, for the benefit of the tribes, the scattered tracts that had been allotted on various reservations within areas suitable only for the production of forest products, or incidental forage crops. The acquisition of such tracts seemed impracticable on many reservations because of a lack of tribal funds and the announced policy of the Congress of making the reservations self-supporting as far as practicable. The Klamath Indians had substantial tribal funds and the re-acquirement for the tribe of non-agricultural forest lands that had been allotted to individual Indians seemed peculiarly desirable. Similar situations existed on various northwestern reservations where smaller tribal funds were available, such as the Colville, Flathead, Quinaielt, Spokane and Yakima. However, it was felt that this step should follow, rather than precede, the enactment of legislation giving a definite status of " Indian Forests " to the timberlands of such reservations. As stated above, efforts to secure such status for Indian forest lands had been met by determined opposition on two reservations and little legislative encouragement.

After the administration of grazing lands was assigned to the Forestry Branch of the Indian Service in April 1930, the need for a consolidation of ownership became still more evident and the conclusion was finally reached in the Forestry Branch that legislation for the acquirement of special areas should be sought even though the establishment of " Indian Forests " had not yet been accomplished. Accordingly in January, 1933 attention was given to the drafting of legislation that would accomplish the desired result.[116] However, the disposition of the Democratic Congress to oppose recommendations of the executive departments had become even more pronounced after the defeat of President Hoover for re-election in November 1932 and, largely because of the improbability of favorable action, no recommendation was made to the Seventy-Second Congress. With the prospect of cooperation between the executive and legislative branches of the government after March 4, 1933, there was reason to hope for more sympathetic consideration in the Seventy-third Congress; and the legislation that had been prepared in January was finally submitted to the Chairmen of the House and Senate Committees on Indian Affairs May 20, 1933.[117] It was introduced on May 22, 1933 as H. R. 5739 and on June 6, 1933 as S. 1889. No report was made on these bills at the first, or special session of the Seventy-third Congress. However, on February 28, 1934 a favorable report, without amendment, was made by the Senate Committee [118] and on March 28, 1934 the House Committee reported favorably on the Senate bill.[119] Final action was not taken on either bill by the Senate or by the House.

The election of President Franklin D. Roosevelt in November 1932 was accompanied by the election of an extraordinarily large majority of Senators and Representatives of his own party. Thus were created conditions more favorable for the enactment of conservation measures regarding Indian lands than had existed at any time previously during the present century. The President was an avowed conservationist and the new Commissioner of Indian Affairs, John Collier, had been deeply interested in Indian Affairs for many years. While Mr. Collier had been a caustic critic of certain conditions and policies of the Indian Service, he appreciated the soundness of the hypotheses upon which the efforts of the preceding administration, to conserve the land, mines, oil fields, forests and forage, had been based. He promptly took a position far bolder and more wide-reaching than any preceding commissioner as to the need of saving for the Indians all lands to which they held title and advocated not only the re-acquirement, as tribal property, of the alienated allotments essential to an effective administration of forest and grazing lands, as contemplated by the previous administration, but also the purchase of extensive areas within reservations and outside of reservations to be held permanently for the use of the Indians.

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[116] See Ind. Of. Files 60150-1930, Klamath 311; 46608-1932, Colville; 2373-1933, Fort Hall; 2386-1933 and 3442-1933, Klamath; see also " Range Management on Indian Lands," *Idaho Forester,* XV, 1933, p. 11, School of Forestry, Moscow, Idaho, Annual.

[117] Ind. Of. File 20300-1933, Gen. Ser. 339; see " The Indian Forests," in a *National Plan for American Forestry* (Gov't Prt Of., 1933), p. 607, known as " Copeland Report " made under Sen. Res. No. 175, 72d Cong.

[118] Sen. Rep. No. 382, 73d Cong. 2d Sess.

[119] House Rep. No. 1100, 73d Cong. 2d Sess.; see previously favorable report by the House Com. No. 626 on H. R. 5739.

Chiefly upon Commissioner Collier's initiative identical bills were introduced in both Senate and House at the second session of the Seventy-third Congress as S. 2755 and H. R. 7902 which contemplated the adoption of entirely novel methods of Indian administration. After extensive hearings and wide publicity, a new bill containing many of the features of the other bills but with the exclusion of other provisions and the inclusion of additional ones, was reported out of the Senate Committee on Indian Affairs, as S. 3645. After important changes in the Senate and House this bill was finally passed and received the approval of the President on June 18, 1934 (48 Stat. 984). This act took the names of the Chairmen of the Committees on Indian Affairs in the Senate and House and has been generally known as the Wheeler-Howard Act.[120]

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[120] Amended as to election procedure of tribes by Act June 15, 1935, Public No. 147, 74th. Cong. (49 Stat. 378.)

The act of June 18, 1934 has also been called the "Indian Reorganization

The first section of this act completely reversed a policy that had been under consideration for one hundred and twenty-five years, had received Executive approval in 1816 and again in 1826, had been adopted quite extensively in 1853, and had received the sanction of a general law in 1887 and of many subsequent acts. Sections one and two of the act of June 28, 1934 read:

> That hereafter no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.
>
> Sec. 2. The existing periods of trust placed upon any Indian land and any restrictions on alienation thereof are hereby extended and continued until otherwise directed by Congress.

Section three authorized the Secretary of the Interior to restore to tribal ownership the remaining surplus lands of any Indian reservation previously opened, or authorized to be opened, for sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States; but preserved all existing valid rights or claims and excluded from the operation of the act any reclamation project previously authorized in any Indian reservation. This section also restored to mineral entry lands of the Papago Indian Reservation in Arizona that had been temporarily withdrawn from such entry under the Hoover administration.

Section four was directed to the prevention of future alienations of restricted Indian lands. It authorized the transfer of such lands from restricted Indian ownership to the ownership of the tribe occupying the reservation within which the restricted lands were located. It provided that interests in lands held by Indians should descend or be devised in accordance with the laws of the State in which the lands were located, or in accordance with federal laws where applicable. It also authorized voluntary exchanges of lands of equal value or the

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Act" because of its provisions for Indian self-government. Mr. William Zimmerman, Jr., of Illinois, became Assistant Commissioner under the Roosevelt administration.

exchange of shares of equal value in any corporation that might be formed for the holding of Indian lands whenever, in the judgment of the Secretary of the Interior, such exchange would be advantageous in the consolidation of Indian lands, or desirable from the standpoint of cooperative Indian organizations such as were authorized by sections sixteen and seventeen of the act.

Section five authorized the Secretary of the Interior to acquire lands, water rights or surface rights, within or without existing reservations for the purpose of providing lands for Indians. The provisions of section five were very broad but there was a limitation that no part of the $2,000,000, authorized to be appropriated for the purchase of lands, should be used for the acquirement of additional lands for the Navaho Indians outside of the exterior boundaries of the Navaho Reservation in Arizona and New Mexico as provided in pending bills, if such bills should be enacted into law. As H. R. 8927 of the Seventy-third Congress, defining the exterior boundaries of the Navaho Reservation in Arizona, was passed and approved by the President on June 14, 1934 (48 Stat. 960) this restriction became effective as to Arizona.

Section six of the act made mandatory the practice of conservative forest and range management that had previously been adopted by the Indian Service through the exercise of the discretion vested in the Secretary of the Interior and the Commissioner of Indian Affairs under general laws.

Section seven authorized the Secretary of the Interior to proclaim new Indian reservations on lands acquired pursuant to the provisions of the act or to add such lands to existing reservations.

Section eight declared that the act should not be construed to relate to Indian allotments or Indian homesteads upon the public domain outside the boundaries of any Indian reservation existing at the date of the act or established thereafter.

By section thirteen, twenty-eight tribes living in Oklahoma, and other Indians affiliated with them, were excluded from the provisions of sections two, four, seven, sixteen, seventeen and eighteen of the act. The same section also excluded the Klamath Reservation in Oregon from the provisions of section four which prohibited the alienation of any restricted lands or shares in the assets of any tribe or corporation, organized under authority of the act, except to the tribe or to members thereof or their heirs. Section thirteen also excluded the natives of Alaska from all provisions of the act except those regarding loans, incorporation and employment in the Indian Service.

Section sixteen authorized the members of any tribe to effect a tribal organization which should have the power " to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets." and section seventeen authorized the incorporation of tribes and the issuance of charters under which the Indians should have an opportunity for the exercise of a large degree of independent action in the handling of their tribal land and other tribal resources.

Section eighteen provided for the determination by the adult members of each reservation whether the act should be applicable to their reservation. The sections of the act not specifically mentioned above were either of special application or had no particular significance as to Indian land policy.

Section nineteen defined the term " Indian " as including all persons of Indian descent who were members of any recognized Indian tribe under Federal supervision at the time of the passage of the act, all persons who were descendants of such members and residing within the boundaries of any Indian reservation on June 1, 1934 and all other persons of one-half or more Indian blood. Eskimos and other aboriginal peoples living in Alaska were specifically designated by the act as Indians.

The act of June 18, 1934 was believed by its advocates to mark the end of declining Indian resources and the inception of a new era for the American Indian. There was a substantial basis for these hopes, but the issues involved were too complex for solution by mere legislative action. The law could operate to remove obstacles from the pathway of Indian progress and could facilitate rehabilitation, but the establishment of the economic independence of the Indians depended, as it ever had, upon many interrelated forces, not the least of which must necessarily be the reaction of the Indians themselves to their environment. No one seemed to perceive this more clearly than Commissioner Collier and, while he was very optimistic in his predictions of a vastly improved future for the Indians, materially, morally and spiritually, he did not fail to emphasize the fact that success was primarily dependent upon their own efforts. History had demonstrated the inadequacy of legislation as a means of assuring a bright future for the Indians.

Exactly one hundred years before the enactment of the Indian Reorganization Act of 1934, the national legislature had attempted to remove the Indian question from the field of social and political controversy through the segregation of the Indians from the whites. The Non-intercourse Act of June 30, 1834 (4 Stat. 729) declared:

> That all that part of the United States west of the Mississippi and not within the States of Missouri, Louisiana, or the Territory of Arkansas, and, also, that part of the United States east of the Mississippi river, and not within any state, to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be Indian Country.

Heavy penalties were provided by this act for those who should, without federal authorization, trade with the Indians, enter the Indian country, purchase Indian lands, settle therein, drive live-stock upon Indian lands to graze, introduce intoxicants, or publish, or distribute, in the Indian country any statement that might tend to disturb the peace. It was confidently believed by many that this act, together with the various treaties, already made or contemplated, for the removal of Indians to the Indian country, as thus defined, would definitely end a controversy that had agitated and annoyed both whites and Indians to the point of exasperation. Another act of June 30, 1834 (4 Stat. 735) provided for the reorganization of the federal administrative force through the establishment of a "department of Indian Affairs" under the direction of the Secretary of War. There was in the acts of 1834 an undercurrent similar to that of the British imperial policy during the period from 1755 to 1763. However, the assumption that definition of the Indian country and strict governmental regulations with respect to Indian trade and intercourse would solve the Indian problem was not well-founded. Unauthorized traders penetrated into the very heart of the Indian country and within a few decades, there was an insistent demand that substantial parts of the same be opened to settlement. The national government could not resist this pressure and large cessions of Indian land followed, with the confinement of the Indians to greatly reduced areas.

Fifty years after the passage of the Non-intercourse Act, provision for the allotment of Indians on the public domain of the United States was made by an item in the Indian appropriation act of July 4, 1884 (23 Stat. 96). The principle of this legislation was diametrically opposite to that of the act of 1834, in that it contemplated assimilation instead of segregation, but its advocates were as sanguine regarding its effectiveness as a means of solving the Indian problem as those of an earlier generation had been regarding that of the act of 1834. The general allotment act of February 8, 1887, likewise directed fundamentally to assimilation, was sincerely believed to afford a sound basis for the Indians to attain economic independence, with accompanying social, moral and spiritual uplift. The unfavorable effects of allotment were not anticipated, or were heavily discounted. Nearly a half century of experience was required to convince the majority of those interested in Indian Affairs that the allotment policy was not only failing to achieve the economic independence of the Indians but was destined to deprive a large proportion of the race of the land ownership that was almost indispensable to their survival. The loss of the Indian title to land had been severely checked after 1920, but the laws authorizing the disposal of the so-called " surplus lands " and those facilitating the sale of allotted lands were still in effect until June 18, 1934. Losses of tribal lands through the opening of the same to sale and entry under Executive order, as provided by various laws, could generally be effectively forestalled by the Indian Service but the gradual alienation of the Indian title to allotted lands continued. A lack of the necessities of life on the part of thousands of Indians and their actual, or alleged, incapacity to cultivate their allotments created a situation under which the Indian Service and the Department of the Interior found it difficult, if not impossible, to resist the demand for the sale of their lands. There was urgent need in 1934 for some definite legislative action to preserve for the Indians their remaining land holdings. The provisions against the sale of Indian lands, as contained in the act of June 18, 1934 aroused a new hope in the hearts of many of the Indians.

From the earliest colonial days charges of encroachment of the whites upon Indian lands had been met by allegations that the Indians did not use beneficially the lands available to them. While these allegations of non-use were an insufficient excuse for encroachment they undoubtedly explain much of the unfriendly feeling exhibited by the whites toward the Indians. At various times and places different tribes of Indians displayed real interest in the cultivation of their lands but this interest was often ephemeral and a good start was frequently soon eclipsed. It cannot be denied that even as late as 1934 the failure of the Indians to fully utilize their land resources was the cause of much disappointment to those interested in the economic advancement of the Indians. In regions where the rainfall was sufficient for the growing of agricultural crops, few Indians cultivated more than a few acres of the land owned by them or their families. This may be partly explained by their lack of capital and credit but the want of these two elements of economic success does not fully account for the failure. In regions in which agricultural success was dependent upon irrigation there was a similar failure in beneficial use. Prior to December 31, 1935 nearly $49,000,000 had been expended in the development of irrigation projects on Indian reservations. About one-half of this expenditure had been made for the benefit of lands acquired by whites either before or after the construction of the projects, but from two-fifths to one-half of the $49,000,000 had been devoted to the development of lands still owned by Indians. In 1935 slightly less than 200,000 acres within these Indian irrigation projects were owned and irrigated by whites and approximately 265,000 acres were owned by Indians, of which amount about 148,000 acres were actually irrigated by the Indians and 117,000 acres were irrigated by others under leases. Within the projects there were 285,000 acres, served by constructed canals, which were not being irrigated.

Exclusive of the land occupied by the Navajo, Papago and Pueblo Indians in Arizona and New Mexico and those of a few other reservations, the range resources were not completely utilized in 1934 by Indian-owned live-stock. On many reservations a large part of the range lands was used under permits or leases for the grazing of livestock not owned by Indians. Within the Navajo, Papago and Pueblo reservations the grazing lands were generally greatly over-stocked and destructive erosion, which had been in progress for several decades, was increasingly active. Several years of agitation against inadequate regulation of range use on Indian reservations had resulted in general agreement that a more conservative use of range resources on reservations was an end greatly to be desired.

However, the reduction of live-stock on reservations in the Southwest presented a very difficult problem. Most of the Indians on the Navaho, Papago and Pueblo reservations were compelled to rely upon their live-stock for a precarious living. Over-stocking was obviously diminishing the productivity of the range and thus must inevitably result in an ultimate diminution in the number of animals that could be grazed upon the land. Yet the total current income from their live-stock holdings was so low that they were reluctant to reduce their flocks of sheep and goats or their herds of cattle and thus temporarily reduce their income. The range lands of reservations in the Great Plains Region and in the Pacific Northwest were not generally over-grazed. There was need for a reduction in live-stock on special areas and the regulation of use on others but no drastic limitations were necessary outside of the semi-desert areas. In fact, there were large areas on which the grass, weeds and browse were not fully utilized because of a lack of full stocking or on account of an insufficiency of water or an inefficient control of stock. Complete use of the range resources on most reservations could be secured only through the development of water, the building of drift fences and the revegetation of areas that had been depleted through excessive grazing or through unwise efforts to grow agricultural crops on lands that received insufficient precipitation for the successful production of such crops.

The inauguration of conservation and relief policies by the Roosevelt administration offered an unparalleled opportunity for the development of the physical resources on Indian reservations and for the improvement of economic and social conditions among the inhabitants of the same. During the three year period from July 1, 1933 to July 1, 1936, approximately $70,000,000 of federal, emergency-relief funds became available for assistance to Indians. Of this total, over $30,000,000 were expended under authority of the Emergency Conservation Act of March 31, 1933 (48 Stat. 22), Emergency Relief Appropriation Act of April 8, 1935 (Public Res. No. 11, 74th Cong. 49 Stat. 115) and the Deficiency Act of June 22, 1936 (49 Stat. 1597, 1601). These conservation funds were used in the construction of forest protection facilities, such as truck and horse trails, fire lines, telephone lines and look-out towers within the forested areas; in the development of water supplies, building of fences and other physical improvements within grazing areas; the drainage of wet lands and the irrigation of areas that could be devoted to the production of subsistence supplies; the elimination of rodents and other animals and insects that were harmful to forest, range or agricultural production; the planting of trees and grasses; and in various other types of work. The value of Indian lands was thus greatly increased.

In the Interior Department Appropriation Act for the fiscal year ending June 30, 1936, provision was made for the expenditure of $1,000,000 in the purchase of land for the use of the Indians as authorized by the Indian Reorganization Act of June 18, 1934. With this appropriation approximately 100,000 acres were purchased. The Resettlement Administration provided nearly $3,700,000 for the purchase of land for Indian occupancy, with which approximately 1,200,000 acres were purchased.

Thus during the three years ending June 30, 1936 $75,000,000 of federal funds were expended for the benefit of the Indians in addition to the regular annual appropriations for administration, which amounted in the three years to over $66,000,000.

The opportunity to earn fair wages under the conservation and public works programs, carried out between 1933 and 1936, combined with a discussion of the increased responsibilities and privileges afforded by the Reorganization Act of June 18, 1934, had a very favorable effect upon the morale of the Indians. As was to be expected, some of them misinterpreted the purposes of the new legislation and entertained exaggerated notions regarding the future, but generally they exhibited good judgement in their appraisal of the advantages that would accrue to them from an acceptance of responsibility and the performance of their part in activities directed to an improvement in their condition.

By an act of May 1, 1936 (Public No. 538, 74th Cong.) the organization and credit provisions of the Reorganization Act of 1934 were extended to the Indians and Eskimos of Alaska Territory. This act also authorized the Secretary of the Interior to designate, as Indian Reservations, the lands in Alaska that had been reserved for their use and occupancy, together with additional public lands adjacent to the lands occupied and to designate, as reservations, other public lands actually occupied by Indians or by Eskimos.

In both the first and second sessions of the Seventy-fourth Congress determined efforts were made toward the enactment of legislation that would extend to the Indians within the State of Oklahoma various provisions of the Reorganization Act of June 18, 1934 from which they had been exempted by section thirteen of the said act. Senate bill 2047, as amended and reported in the House of Representatives (Report No.

2408, 74th Cong.) was passed by both houses of the legislature in the closing hours of the Seventy-fourth Congress and received the approval of President Roosevelt on June 26, 1936 (Public No. 816, 74th Cong.).

Section 1 of this act, like section 5 of the Reorganization Act of June 18, 1934, authorized the Secretary of the Interior to acquire interests in lands and water rights for the benefit of Indians generally but imposed the provision that lands thus acquired should be " agricultural and grazing lands of good character and quality in proportion to the respective needs of the particular Indian or Indians for whom such purchases are made." This section provided that the title to lands thus acquired must be taken in the name of the United States in trust for the tribe, band, group or individual Indian for whose benefit such land was acquired, and that the lands should be free from all taxes while held by the United States, save that the State of Oklahoma might collect a gross-production tax, not in excess of the rate collected from lands in private ownership, upon all oil and gas produced from such lands.

Section 2 of the act provided that:

> Whenever any restricted Indian land or interests in land, other than sales or leases of oil, gas, or other minerals therein, are offered for sale, pursuant to the terms of this or any other Act of Congress, the Secretary of the Interior shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians of the same or any other tribe, at a fair valuation to be fixed by the appraisement satisfactory to the Indian owner or owners, or if offered for sale at auction said Secretary shall have a preference right, in his discretion, to purchase the same for or in behalf of any other Indian or Indians by meeting the highest bid otherwise offered therefor.

Section three authorized any tribe or band of Indians in Oklahoma to organize for its common welfare and enjoy the the privileges extended to incorporated groups under the Act of June 18, 1934. Section 4 authorized the issuance of charters for business purposes to groups of ten or more Indians and section 5 defined the powers of such cooperative associations. Section 6 authorized loans from federal funds to Individual

Indians, associations and corporate groups organized under the act and appropriated $2,000,000 for such loans.

Section 7 made applicable to Oklahoma an equitable share in all funds that should be appropriated under the authorizations of the Act of June 18, 1934 and further provided:

> That any royalties, bonuses, or other revenues derived from mineral deposits underlying lands purchased in Oklahoma under the authority granted by this Act, or by the Act of June 18, 1934, shall be deposited in the Treasury of the United States, and such revenues are hereby made available for expenditure by the Secretary of the Interior for the acquisition of lands and for loans to Indians in Oklahoma as authorized by this Act and by the Act of June 18, 1934 (48 Stat. 984).

Section 8 excepted Osage County, Oklahoma, from the provisions of the Act. The exception of the lands within the Osage Reservation boundaries, which correspond to those of the County, may be explained by the fact that the Osage held their reservation in Oklahoma under a title differing materially from that under which Indians have generally held reservation lands. Under Acts of Congress of July 15, 1870 (16 Stat. 362) June 5, 1872 (17 Stat. 228) and March 3, 1873 (17 Stat. 538) the lands of the Osage Indians in the State of Kansas were sold and the proceeds used to purchase from the Cherokee tribe certain lands west of the 96th Meridian and north and east of the Arkansas River. This transaction has always been interpreted as vesting a fee title to the Oklahoma lands in the Osage, as evidenced by a deed of June 14, 1883 from the Cherokee tribe to the United States in trust for the Osage Indians. Fortunately when provision was made for allotment of the Osage, the mineral rights were reserved for the benefit of the tribe and returns therefrom have been much more equitably distributed among the members of the tribe than would have been possible if the under-surface rights had been assigned to individuals when the allotment was made.

CHAPTER VIII

THE PAST, THE PRESENT, AND THE FUTURE

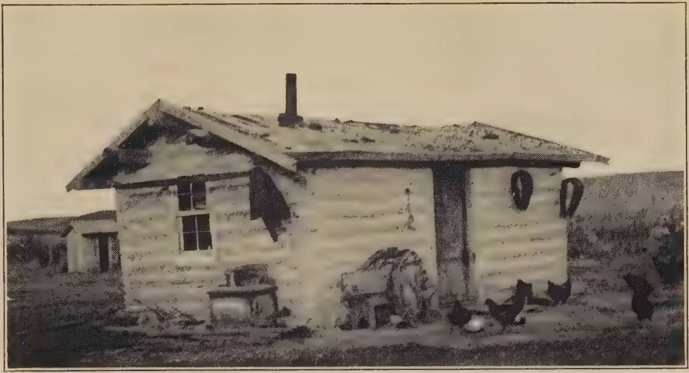
In reviewing the legislative and administrative record of three hundred years regarding the status of Indian ownership of land within the area embraced by the United States of America, an effort has been made to present all laws of general significance. In doing this it has seemed essential that certain laws of particular application be cited or briefly discussed because of the light that they shed upon the general trend of thought. It has also seemed advisable to include statements and information that had no direct connection with legislation but which clearly disclosed a part of the mental and social attitude that prompted the legislation.

As far as practicable those who had a part in the administration of Indian Affairs have been allowed to speak for themselves. It is fully realized that such a method of presentation is unusual and open to the charge that it merely affords a view of the opinions of the administrator who may often be largely concerned in the defense of his own course of conduct. However, the quotations given, almost without exception, carry in themselves evidence of their sincerity. The reader will probably not indorse the sentiments expressed by some of the quotations, neither does the writer. Nevertheless, it has seemed that an unbiased attitude should be maintained and that each viewpoint should be set forth by its advocate.

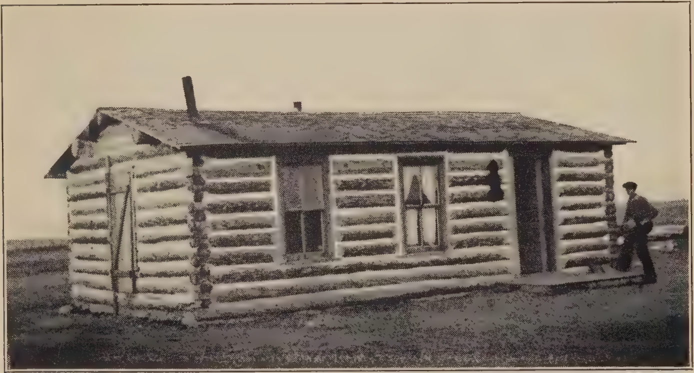
The critical reader will be impressed by the lack of a consistent and logical policy. From the beginning of the period of national administration there have been decided evidences of a " trial and error " system—an almost continual tendency toward experimentation. One may easily condemn this state of affairs, yet the remark of President Cleveland, in another connection, regarding the facing of a condition rather than a theory may be cited in extenuation of the course pursued. The Indian problem in America has been one of unusual difficulty. A race, limited in numbers, yet possessed of a most determined

INDIAN HOMES IN THE GREAT PLAINS REGION.

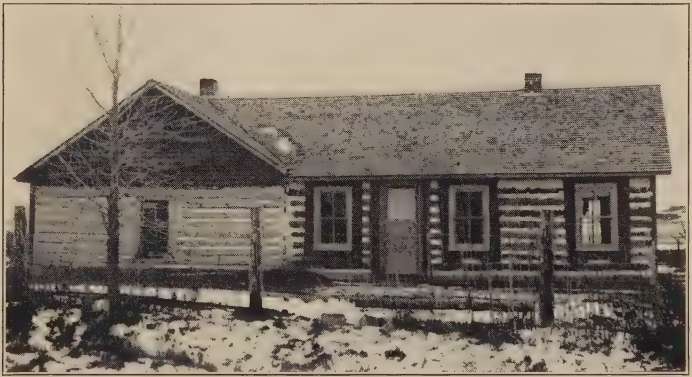
Photographs below were taken on the Fort Belknap Reservation, Montana, in 1933.



An average home of Great Plains Indians in the first decade of the twentieth century.



An Indian home of the type constructed on the Great Plains during the second decade of the twentieth century, generally with the assistance of the Government.



An Indian home of the better type constructed in the Great Plains Region during the second and third decades of the twentieth century.

spirit of independence and an almost incomparable resistance to change in habits of thought and conduct, occupied a territory into which there swarmed the most adventurous men from European nations, whose past history had been replete with examples of daring heroism and of national conquest. Under such circumstances frequent clashes between representatives of the races were inevitable. It must be admitted that while the European colonials were in a minority and their settlements open to the stealthy and savage attacks of the natives, a policy of avoiding open conflict was followed. It must be conceded also that, except for the sustained hostility of a few tribes and occasional outbreaks by others, the attitude of the Indians in America toward the European intruders was conciliatory. Among the Indians, as among the whites, there were always individuals disposed toward friendliness with other men and in many tribes the influence of such men prevailed.

But there were also individuals who improved every opportunity to arouse the combative instincts of the Indians and unfortunately there were always those among the whites ready to afford the hostiles among the Indians ample ground upon which to base their appeal to the suspicions of their fellow tribesmen. One cannot avoid a keen sympathy with the Indians in their heroic struggle against superior numbers and a civilization that placed the natives at a great disadvantage in a physical contest, yet one must not overlook the fact that the methods of warfare to which the Indians were accustomed were calculated to develop in the whites a most bitter resentment and a spirit of reprisal. Undoubtedly the writings of Parkman and others present a distorted picture in that they reflect in high light the treachery and cruelty of the Indians without delineating as completely and sympathetically the wrongs that the Indians had suffered. On the other hand later writers seem to have overlooked the terrible mental and physical suffering that individual whites experienced because of the tendency of the Indians to inflict upon innocent men, women and children the retribution that they might, with a great measure of justice, have inflicted upon the individuals who had wronged them.

The effect of the early massacres of innocent victims by a few disaffected Indians could not be eradicated from the social consciousness of the race upon whose members the outrages had been committed; and among the natives each generation passed on to the next the burning resentment that resulted from the loss of their ancestral lands and hunting privileges. If one reflects upon the fundamental differences between the individual and social concepts and purposes of the two races and upon the tens of thousands of instances in which there was a conflict of interest, he will reach the conclusion that the number of armed contests between the Indians and the whites were far fewer than might reasonably have been expected. Nor does it appear that the instances in which armed conflict was avoided may be credited chiefly to the good sense and self-restraint of the whites. There was much truth in the statement of Thomas J. McKenney, Superintendent of Indian Affairs for Washington Territory in a report of July 26, 1867 that " White men would not suffer one-tenth the wrong the Indian patiently bears without rebelling."[1]

The indisposition of the Indian of the past to hold himself to sustained manual labor with a view to the acquisition of future benefits must be admitted, his inability to resist the evils of intemperance cannot be denied, and his limited capacity for the adoption of the mode of life and the social and political philosophy of the Caucasian has been amply demonstrated; yet no one may justly accuse the great majority of the American Indians of unreasonable intractability in the acceptance of a civilization that has been to a large extent forced upon them. No one who has had opportunity to observe personally the attitude of a large proportion of the older men in most tribes of Indians can fail to appreciate and admire the dignified resignation with which they have submitted to what seemed to be their inevitable fate and the earnest concern that they have manifested for the welfare of their children and grand-children in a social system to which they seemed quite incapable of adapting their own lives. Possibly because of their physical surroundings, the Pueblo, Pima and other tribes in the Southwest had developed a manner of life in which both men and women exhibited marked habits of industry and, throughout the United States, the Indian women have generally been industrious in the performance of domestic duties. However, the earliest travelers in America indicated that the men were much given to the idling away of time and, with the close of the period of the chase and of inter-tribal warfare, the Indian men seem to have failed to find any occupation of sufficient interest to hold them to even a reasonably continuous effort. In a report of September 24, 1840 to Commissioner Crawford, Henry R. Schoolcraft wrote: "The Indian confounds voluntary labor with servility." [2] In a report of 1879 Captain Wm. E. Daugherty, Acting Agent at Lower Brule, stated: [3]

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[1] Com. Ind. Aff., 1867, Accom. Paper No. 1; see Com. Ind. Aff., 1853, Accom. Paper No. 43 for information as to cruelty of some Indians, also Com. Ind. Aff., 1858, Accom. Paper No. 81, p. 225 (erroneously numbered 522 in Ind. Of. Lib. copy.)

> It is exceedingly difficult to make the labor of uncivilized Indians productive—
>
> 1st. Because manual labor is incompatible with an Indian's nature.
> 2d. Because his subsistence is assured irrespective of labor.
> 3d Because he places an exhorbitant valuation on his time and services.
> 4th. Because he cannot be bound by contract or held to service when it becomes monotonous or arduous.

Unfortunately the failure of the Indians to engage in productive industry had been such, from the time of the first settlement of the whites in America, as to justify to a large extent the conclusion expressed by Daugherty in his first item; but it is quite possible that the acting agent did not realize how closely related habits of industry are to personal interest and that if men of other races enjoyed the advantage of his item No. 2 and were under the disability of his item No. 4 they might find manual labor as inconsistent with their nature as did the Indians and might be as disposed as they to ask an unreasonable price for their services. Nevertheless, the improvidence of many of the Indians is too well attested to be subject to doubt.[4]

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[2] Com. Ind. Aff., 1838-42, Ind. Of. Lib. copy, p. 348; see also p. 354.
[3] *Ibid.*, 1879, p. 35.

The assumption that the Indians were almost universally indolent has been too generally accepted. Wherever Indians are under competent leadership, either in small or large groups, and they can be brought to realize the real utility of the work being done and to perceive the relationship of the work to some desired result, the members of many tribes are not inferior to other workers in the same field of endeavor. It is true that, because of their very habits of life, it is frequently much more difficult to arouse their interest in such work than it is to arouse the interest of men accustomed to work of a similar nature. Indians are to a marked degree inclined to value present goods or present leisure above future goods and future leisure. It is also exceedingly difficult for many individual Indians to hold themselves to a monotonous task separated from their fellow men. The Indian yields more readily to discouragement than the Caucasian.

Elbert Herring, who became the first Commissioner of Indian Affairs on July 10, 1832, in discussing the removal of the Indians from Georgia, Alabama and Mississippi to western lands, while in charge of the division of Indian Affairs in the War Department, said in a report of November 19, 1831:[5]

> The humane policy, exemplified in the system adopted by the Government with respect to the Indian tribes residing within the limits of the United States, which is now in operation, is progressively developing its good effects; and, it is confidently trusted, will at no distant day, be crowned with complete success.

But at the very time this was written other sincere men were denouncing such removal as the antithesis of a humane policy and the denunciation has continued to the present day, notwithstanding the fact that after their removal to Indian Territory the Five Civilized Tribes became quite prosperous and enjoyed an independence of social and political action that could never have been achieved within the States of Georgia, Alabama and Mississippi.

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[4] *Ibid.*, 1855, p. 4; 1864, p. 176; 1865, p. 33; 1867, Accom. Paper No. 31; 1883, p. lx; 1884, pp. 30-35.

[5] Com. Ind. Aff., 1825-37, Ind. Of. Lib. copy, p. 172.

After the transfer of the Indian Bureau from the War Department to the newly created Interior (Home) Department in 1849, the criticism formerly leveled at the War Department was centered upon the Interior Department. The Interior Department attempted to pursue a policy of conciliation. Soon there arose a demand for the return of the administration of Indian Affairs to the War Department so that a more vigorous policy might be effected. A large part of the annual report of Commissioner Taylor for 1868 was devoted to an argument against such return.[6] The proposed transfer was also discussed by Commissioner Edward P. Smith in his report for 1875. (p.18) In his report of 1872 Commissioner Walker discussed at some length the capacity of the various Indian tribes for armed resistance and expressed the conclusion that the probability of any serious Indian War was passed, and in his book " The Indian Question," published two years later (pp. 22-29), Walker repeated this assurance. In his annual report for 1874 Commissioner Smith wrote:

> Except under extraordinary provocation, or in circumstances not at all to be apprehended, it is not probable that as many as 500 Indian warriors will ever again be mustered at one point for a fight; and with the conflicting interests of the different tribes, and the occupation of the intervening country by advancing settlements, such an event as a general Indian war can never again occur in the United States.

In his report for 1875 Smith repeated this statement, apparently in secure confidence as to its soundness.[7] Yet in June 1876 occurred the annihilation of General Custer's force on the Little Big Horn River by approximately 2,000 Indians, and between 1875 and the autumn of 1881 there were open conflicts of United States armed forces with not less than a dozen different tribes within a vast area extending from western Dakota to Washington Territory and from the Canadian border south to Oklahoma and southern Utah. The Indian depredations and outbreaks in the late seventies strengthened the demand for a more virile administration.[8] The use of the military was considered necessary to quiet the South Dakota Sioux in 1890-91 and even a small group of the Chippewa at Leech Lake, Minnesota, as late as 1898. However, it may be said that the year 1881 witnessed the end of real military campaigns by United States forces against the Indians. The Indians had come to realize the futility of such contests and the government had become convinced that military campaigns against the Indians were not only extremely costly but largely ineffectual.[9] Nevertheless, substantial garrisons of federal troops were maintained at scattered but strategic locations in the west for approximately forty years after 1881 and, without doubt, the knowledge that such forces were readily available in case of need exerted a helpful influence upon recalcitrant individuals among the Indians.

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[6] *Ibid.*, 1868, p. 7; cf. *ibid.*, 1892, p. 10, Com. Morgan.
[7] *Ibid.*, 1875, p. 4.

Between 1862 and 1881 opposing positions were stoutly maintained as to the wisdom and justice of the confinement of Mescalero and Navaho Indians at the Bosque Redondo in Eastern New Mexico,[10] as to the removal of the Northern Cheyennes to Indian Territory,[11] and as to efforts at removal and colonization of other Indians.[12] The numerous raids and outbreaks by the Indians between 1862 and 1881 had served to keep the Indian question ever in a controversial stage;[13] From some came a demand for harsh measures, from others argument for the consolidation of the tribes on fewer reservations in order that the army detachments in the west might be concentrated and thus made more effective.[14]

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[8] See J. Elliott Condict, "The Indian Question," *Presbyterian Quarterly and Princeton Review,* Jan. 1876, in Misc. Doc. Rel. Ind. Aff., 1, p. 632; House Doc. No. 92, 44th Cong. 1st Sess., Misc. Doc. Rel. Ind. Aff., 1, p. 195; House Exec. Doc. 128, 44th Cong. 1st Sess., Misc. Doc. Rel. Ind. Aff., 1, p. 196; House Rep. No. 240, 44th Cong. 1st Sess., Misc. Doc. Ind. Of., 1, p. 473; all in Ind. Of. Lib.

[9] Com. Ind. Aff., 1868, pp. 26-50, giving report Peace Commission, Jan. 7, 1868. *Ibid.,* 1902, p. 24, stating that from foundation of national government to 1890 there had been spent "in subdueing, fighting and controlling the Indians" $845,275,290.

[10] Com. Ind. Aff., 1863, Accom. Paper No. 42, p. 112, in which Gen. James H. Carlton said: "you can feed them cheaper than you can fight"; 1864, pp. 162-3; 1866, p. 145; cf. 1865, p. 162, Jicarillas; 1869, p. 22; 1871, pp. 48, 77.

[11] *Ibid.,* 1878, pp. xxii-xxiv.

[12] *Ibid.,* 1863, Accom. Paper No. 71, Minn. Sioux; cf. Paper No. 151, p. 307 and Paper No. 169, p. 328; 1864, p. 188, Michigan Indians; 1870, Paper No. 11, p. 52, Modocs to Klamath; 1871, p. 306, Klamath Modocs; 1881, p. v, Mescaleros; 1882, p. lxiii, Joseph's Band of Nez Percé.

Although the close of the seventies marked the end of serious Indian armed conflict, there continued a feeling of sullen resentment on the part of many Indians and a less commendable attitude on the part of some leaders. One should not condemn the Indian race on this account. It was natural that this condition should exist, in a proud race of people who had been compelled by force of circumstances to accept a condition against which their inner nature rebelled. The remarks of Schoolcraft regarding the activities of Black Hawk were prophetic of a few future leaders of the race. In 1857 Schoolcraft said:[15]

> No theme is so popular with an Indian reformer as complaints of the existing state of things, compared with the years that are past, when, it is imagined, the people were wiser and better, and even spoke their language in greater purity. The past is always referred to by the Indians as a golden age, and, while indulging in reminiscences of bygone prosperity, they are prone to overlook the future and neglect the means of providing for it. * * * The olden time has ever been hallowed in Indian reminiscences. The evils of the present hour are magnified, and the future disregarded. Such were Black Hawk's teachings.

The attitude described by Schoolcraft is by no means characteristic only of the Indian reformer and yet it seems true that the Indians are somewhat more inclined than men of other races to idealize the past rather than to visualize new accomplishments in the future. The true Indian is a very determined conservative in most aspects of his mental outlook. He fears changes and is suspicious of new plans. Even after he has accepted proposed changes he is disposed to retreat from the advanced position when reverses are suffered.

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[13] Com. Ind. Aff., 1859, p. 5; 1862, pp. 40, 60, and 66; 1867, Accom. Paper No. 25, p. 95; 1870, p. 4; 1875, pp. 4 and xiv; 1876, p. xiv; 1878, pp. xi, xii, xxii, and xxiv.

[14] *Ibid.*, 1878, p. xi; cf. *ibid.*, pp. xii-xxiv; 1867, Paper No. 25, p. 195.

[15] *History of Indian Tribes,* VI, p. 449.

Throughout the nineteenth century there was a division of public opinion as to whether the Indians should be segregated from the whites. Such segregation was the basic purpose of much of the agitation for the removal of Indians that occupied so large a place in Indian administration during the first half of the century. Soon after 1850 the question of whether the Indians who had always roamed over vast areas west of the Mississippi were to be segregated and confined on reservations became a subject of very earnest discussion. One group maintained that this was the only method by which frequent clashes between the Indians and the whites could be avoided; others maintained that under such a system of segregation the Indians would make very slow progress towards civilization. The allotment policy was partly directed toward overcoming the objections to the reservation plan which was condemned as contributing to the continuation of tribal customs and habits that were believed to be largely responsible for the unsatisfactory advancement of the Indians toward economic independence. Possibly the high tide of the controversy was reached in the report of the Board of Indian Commissioners for the year 1899 in which it was said: [16]

> The reservation became too often the means of insulating Indians from all the life-giving currents of civilized life; it was a school in vice, a domain of lawlessness and laziness, licensed and perpetuated by the Government. *The best intentions on the part of the Indian Bureau, and on the part of Indian Agents, often men of the highest character, could not do away with the evil effects of this policy of insulating savages to perpetuate and breed savagery.*

Throughout the nineteenth century and down to the present day the administration of Indian Affairs has also been almost continuously subjected to severe criticism. Much of this criticism was undoubtedly well-founded, yet more of it resulted from the inherent difficulties involved in the task imposed upon public officials. In his report of November 27, 1851, Commissioner Lea quoted former Attorney General Legaré as saying: (p. 274)

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[16] Com. Ind. Aff., 1899, Part II, p. 232; cf. 1864, p. 185 Dole comment.

> there is nothing in the whole compass of our laws so anomalous, so hard to bring within any precise definition, or any logical and scientific arrangement of principles, as the relation in which the Indians stand toward this government and those of the States.

In his report for the following year Commissioner Lea remarked:[17]

> Among the errors that abound respecting our Indian relations, there is one so injurious to our national reputation that it should not be disregarded. The opinion is extensively ententained that our whole course of conduct towards the red men of this country has been marked by injustice and inhumanity. An enlightened consideration of the subject will lead to a different conclusion.

Commissioner J. Q. Smith in his annual report for 1876 referred to the "traditionary belief, which largely prevails, that the Indian Service, througout its whole history, has been tainted with fraud." Smith remarked upon the isolation of the agencies and the consequent lack of surveillance and continued: (p. III)

> Thus it happens that the fact that frauds are known to have been committed, joined to knowledge that abundant opportunities for fraud exist, excites in minds of a suspicious public a readiness to believe every rumor affecting the integrity of an Indian agent or the honesty of the Indian Service. * * * A distinguished military officer, after long experience with Indians, states that to successfully manage one of the most important Indian agencies requires as high an order of capacity as to command an army.

In his report for 1892 Commissioner Morgan struck a similar note when he said: (p. 134)

> For many years the Office was under the ban of public opinion, and there was a wide spread conviction that it was dominated by false ideas and was not managed by business principles nor in such a way as to satisfy a high public sentiment, an opinion which was not wholly without foundation. One of our most distinguished

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[17] Com. Ind. Aff., 1849-52, Ind. Of. Lib. copy, p. 293.

> public men said to me that while he was a member of Congress, whenever he had any constituent clamoring for office for whom he could make provision nowhere else, he always unloaded them on the Indian Office.* * * From my three years' experience, however, I am fully convinced that the popular opinion regarding the demerits of the Indian Service is greatly exaggerated. Criticisms and abuse are the inevitable results of an honest endeavor to rightly administer the business of the Indian Office. I believe it can be done, however, if a man in willing to pay the price. * * * When my attention was first directed to the average length of term of the Commissioner of Indian Affairs (two and one-half years), I wondered at its brevity; after a service of three years and two months and an experience of what is involved, I wonder that the average term of service has been so long.

However accurate a reflection of conditions existing before 1892 this statement of Commissioner Morgan may have been, it certainly does not describe the conditions that have existed during the first third of the twentieth century. From the year 1900 on the earnest efforts of the Indian Service to substitute Civil Service appointments for political selections were reasonably successful and for many years the Indian Service has been as free from political influence as many other bureaus of the Federal Government.

Unquestionably much of the apparent lack of decision on the part of the Indian Service and its faults of experimentation and even of vacillation may be explained by the fact that it has been, throughout its history, the center of successive storms of criticism. No small part of its failure to achieve the results desired by its critics may be due to the fact that the future has been almost constantly obscured by doubts as to future legislative policy. Individual members of Congress have always felt a deep interest in Indian Affairs and the members as a whole have never been antagonistic toward the Indians as individuals or as groups; but the legislative branch has frequently exhibited a decided reluctance to enact into law many measures suggested by the executive branch and to a very large degree Indian Affairs have been allowed to drift, notwithstanding the fact that the number of bills referring to Indians that have been considered and even the number that were actually passed has been far above the number relating to any other class or group in the population of the nation.[18]

During recent years there has been a large amount of criticism to the effect that the Indian Service has not properly protected the interests of the Indians with respect to the conservation of their property. It is true that the area of lands occupying the status of Indian reservations has been greatly reduced during the sixty-five years since the act of 1871 was passed, ending the treaty period, and especially since the adoption of the general allotment policy under the act of February 8, 1887. However, the agreements with the Indians under which cessions of lands have been made have all provided either for the purchase of the land by the United States or for the disposal of the lands under the general federal laws and the payment of the proceeds to the Indians. In some instances the price received has been considerably less than the real commercial value of the lands; but generally the price received has fairly well represented the current value of the land. Figures are not available as to the income thus obtained for the Indians but the total received since 1871 would unquestionably exceed $100,000,000

It is true that through erroneous surveys substantial areas to which the Indians were entitled were excluded from certain reservations and that the Congress failed for decades to make appropriations to pay for all the lands that had been ceded by the Indians. The record of the Federal Government with respect to the land claims of the Indians of California is especially open to criticism. A number of these injustices have been corrected by belated congressional appropriations and court decisions and others are being adjusted through the Court of Claims under congressional authorization.

It is also a lamentable fact that through the removal of restrictions upon the sale of allotted lands millions of acres have passed out of Indian ownership. However, only to a limited extent may such loss be charged to the fault or indiscretion of the Indian Service. The greater part of these lands were lost as the result of legislation for the removal of restrictions on the sale of allotted lands, which removal the Indian Service did not favor or recommend. In accordance with statutes authorizing the sale of allotted lands there have been sold under Indian Service supervision over one and one quarter million acres of land of non-competent Indians from which sales, an income of nearly $23,000,000 had been received prior to June 30, 1932 and before that date approximately 2,407,000 acres of inherited lands had been sold for slightly less than $45,000,000. The average price received for all these lands sold under government supervision was over $18.50 per acre. As a great part of this land was unimproved, it is apparent that the reasonable value was received for it. The statements frequently made in newspapers and other periodicals to the effect that Indian lands have been sold under governmental supervision " for a mere song " have no substantial basis. Lands as to which the restrictions have been removed so that the Indian Service could exercise no supervision over the sales have in thousands of instances been sold for much less than their real value. Of 15,795,339 acres originally allotted to the members of the Five Civilized Tribes only about 1,500,000 acres were still held under restriction and tax exempt on June 30, 1932. This condition was chiefly due to the removal of restrictions against sale from the most of the land by act of Congress. Prior to June 30, 1932 slightly over 800,000 acres of allotted land belonging to members of the Five Civilized Tribes had been sold under Indian Service supervision for an average price of $14.50 per acre, which probably represented a reasonable value.

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[18] See remarks of Representative Scott Leavitt, Chairman House Com. on Indian Affairs, Cong. Rec., March 2, 1927; March 2, 1929; March 16, 1931.

Fortunately the supervision of the Indian Service over the disposal of oil and gas taken from lands of the Five Civilized Tribes and lands of the Osage Indians had not been released before the discovery of those products and, prior to June 30, 1932 approximately $90,000,000 had been realized for the benefit of the Five Civilized Tribes and to June 30, 1933 the Osage had derived an income of approximately $245,000,000 from oil and gas leases made under the supervision of the Indian Service.

For decades the annual income from grazing leases and permits on Indian lands administered by the Indian Service has approached $1,000,000 and the income from farming leases, chiefly on allotted lands, has each year provided the Indians with a still larger amount. There can be no doubt that in hundreds of instances it would have been better that the Indians do their own farming but because of their lack of desire to do so and frequently their lack of capital for carrying on farming operations, the leasing of the land under Indian Service supervision has seemed to present the only practicable solution of the problem. At least, the leasing of the land provided a partial support for individuals who would otherwise have been asking for rations.

With true partisan zeal a Congressional investigating committee inquired into lumbering operations under the La Pointe Indian Agency at Ashland Wisconsin and submitted a voluminous report under date of March 2, 1889.[19] This report stated that during the three-year period beginning in the autumn of 1885 nearly 383,000,000 feet of pine timber had been removed from the Bad River, Lac du Flambeau, Lac Courte Oreille and Fond du Lac Reservations for which the Indians had received a net income of $833,000. It was indicated that this timber constituted approximately one-half of the timber on the reservations and the investigating committee expressed deep concern for the future of the Indians because of the alleged improvident manner in which the sales had been administered. But apparently the information upon which the report was founded was not very reliable. During the thirty years following 1892 one company, the J. S. Stearns Lumber Company, removed from the Bad River Reservation alone 1,267,579,303 feet of timber for which $6,813,372.28 was paid to the Indian agency as stumpage for the Indians and subsequent to the report of 1889 hundreds of millions of feet of pine besides considerable quantities of other species were removed from the other reservations named by the Congressional Committee as having been stripped of their timber.[20]

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[19] Sen. Rep. No. 2710, 50th Cong. 2d Sess., pp. i-v.

[20] See Report by Dr. B. E. Fernow, Ind. Of. File 31242-1905.

During the period July 1, 1909 to June 30, 1932 inclusive there were cut from Indian lands under the supervision of the Indian Service 7,762,000,000 feet of timber for which there was received over $33,275,000. Less than eight percent of this amount was used for expenses connected with the administration of the sales and the protection of the forests on the reservations where the timber was cut. The remainder—more than $30,500,000—was placed in the United States Treasury or in bonded banks for the benefit of the Indians from whose reservations the timber was cut. From these funds homes were built or bought, farms were cleared and developed, accumulated indebtedness for necessaries of life was paid, children were given advanced educational privileges, aged Indians were made comfortable and numerous other advantages were enjoyed by the Indians. Unquestionably these funds, like those derived from leases and from land sales, were spent too freely; but one must not overlook the many real advantages that were derived from such funds.

Subsequent to June 25, 1910 when Congress clearly indicated its adoption of the view that the Indians had the same interest in the forests on Executive-order reservations as in those on treaty reservations, the Indian Service has consistently pursued a policy of forest conservation; yet such policy rested upon a rather insecure foundation. Except for the item in the Indian appropriation act for the fiscal year 1917 establishing the Red Lake Indian Forest (Act May 18, 1916, 39 Stat. 123, 137), no positive legislation providing for a permanent status of timberlands on Indian reservations for timber production purposes had been passed. In fact subsequent to the promulgation of the Executive Orders of February 12, 1912 restoring the forested lands on eight reservations in Arizona, California and New Mexico to their former status as Indian lands, there were repeated suggestions that the administration of the forested lands on Indian reservations be transferred to the Forest Service of the Department of Agriculture,[21] or to the National

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[21] Hearings before House Com. on Ind. Aff., Sept. 29, 1919, Ser. No. 6, pp. 3-45; Hearings before Senate Com. on Reforestation under S. Res. 398;

Park Service.[22] Even after 1910 bills were occasionally introduced for the opening of forested lands on Indian reservations to settlement.[23]

Notwithstanding the fact that the general allotment act of 1887 clearly contemplated that lands allotted to Indians should be suitable for the establishment of homes, many Indians selected lands that were heavily timbered and wholly unfitted for agricultural use. In many instances such lands were reported by the allotting agent as having been assigned to Indians as allotments and the same were approved by the Secretary of the Interior. The allotment of forested lands might be justified where the lands, when cleared of their forests, would be suitable for agricultural use, as was frequently the case in the Lake States and occasionally on reservations in the western states. Little justification could be offered for the allotment of heavily forested lands on dry ridges or slopes of the intermountain region, on the pumice soils of the Klamath or on the coarse gravelly soils of the Pacific Coast region. Furthermore, the allotment of forested lands often exaggerated the disparity in value of allotments which was not entirely avoidable even when lands suitable for homes were allotted.[24] Approximately thirty selections of forested land, entirely unsuitable for agricultural

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March 7-8, 1923, Part I, pp. 5 and 19; H. R. 15327, 66th Cong. 3d Sess.; H. R. 129, 67th Cong. 1st Sess.; S. 1869, 67th Cong. 1st Sess.; Ind. Of. File 10714-26, Greeley; *Journal of Forestry,* XIX, No. 4, Apr. 1921, p. 354, Sherman article.

[22] See S. 2676, 67th Cong. 1st Sess.; S. 1709, 68th Cong. 1st Sess., to create Yakima National Park from Yakima Reservation; Hearing before House Com. Ind. Aff., Dec. 14, 1922, on S. 3519, to create Mescalero National Park from Mescalero Reservation; H. R. 11388, 72d Cong. 1st Sess., to create National Park from lands of Menominee Reservation; Ind. Of. File 5341-1930, Keshena, 307.2.

[23] H. R. 21761, 61st Cong. 2d Sess., Feb. 24, 1910, Klamath; S. 7948, 61st Cong. 2d Sess., April 27, 1910, Klamath; H. R. 1946, 67th Cong. 1st Sess., Apr. 21, 1921 allotment of Klamath timber; H. R. 10966, 67th Cong. 2d Sess. and Hearings of Dec. 15, 1922 thereon to allot timber to certain Indians at Klamath; S. 4864, 69th Cong. 2d Sess., to allocate Klamath timber to certain lumber companies; Ind. Of. File 57731-1926; S. 8119, 61st Cong. 2d Sess., May 5, 1910, Warmspring.

[24] Value of timber cut from Allotment No. 433 to Andy Wain was $2,137.71 while timber cut from Allotment No. 802 to Frank Law was over $40,000. These allotments were both on Quinaielt Reservation.

use, on the Klamath Reservation, to the approval of which objection was made by forestry employees of the Indian Service, were finally approved after the enactment of legislation authorizing such approval.[25] Subsequent unsuccessful efforts before Congress to secure forested allotments through legislation,[26] were followed by a suit through which several Klamath Indians sought to compel the Interior Department to allot heavily forested lands. This suit was decided against the petitioners.[27] In the meantime an act authorizing additional allotments on the Flathead Reservation in Montana, obtained through the efforts of Flathead Indians, resulted in the allotment of forested lands that were wholly unfit for agricultural use and more valuable for timber production than for grazing purposes.[28]

The charge has been so often made that the United States Government has generally been unfair in its treatment of the Indians and there have been so many particular instances of neglect and ungenerous treatment that it seems appropriate to mention the rather formidable amounts that have been appropriated by the Congress from the national funds for the benefit of the Indians. Schoolcraft states that from the Declaration of Independence until the beginning of the Federal Union on March 4, 1789 a total of $508,103.14 was expended by the Confederation on account of treaties with Indians and for presents to them at a time when the army had neither shoes nor clothing.[29] The total expenditures of the Federal Government from 1789 to 1934, inclusive, have been stated in an official report as $1,288,522,062, of which amount $1,151,877,145 was given as expended between 1873 and 1934, inclusive. However, a compilation prepared in the Indian Service for submission to a Congressional committee gave a total for the period 1873 to 1934, inclusive, of approximately $600,000,000, of which amount over $60,000,000 was appropriated from tribal Indian funds. The writer is unable to explain this astonishing discrepancy in the reports as to expenditures. However, even if the lower total is taken as being the more nearly correct of the two totals, it must be admitted that the expenditure of more than a half-billion dollars during a period of sixty years represents a large gratuity to a group of approximately 300,000 people, the great majority of whom have not been paying taxes during the said period. Nevertheless the efforts of the government to improve the Indians through education and industrial advancement have never been adequately financed and had the appropriations been doubled during a large part of this period the results attained would probably have been commensurate with the expenditures and the Indian problem would be nearer solution than it now is.

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[25] Act June 30, 1919 (41 Stat. 3, 25).

[26] Hearings House Com. Ind. Aff., 67th Cong. 4th Sess., on H. R. 10966, 67th Cong. 2d Sess., Dec. 15, 1922.

[27] Ind. Of. File 6456-27, Dec. Judge Bean with 46480-1925, Klamath 313; cf. 46479-25, Klamath, 313, Rosetta Crawford Case. See file 121917-15 re inadvisability of allotting timber. Superintendents Fred A. Baker and Leroy D. Arnold took an active and effective part in preventing the disintegration of the Klamath forest lands through allotment.

[28] Act Feb. 25, 1920 (41 Stat. 452), Ind. Of. File 49308-1921; see also act Aug. 1, 1914 (38 Stat. 605), additional allotment Bad River, Act May 19, 1924 (43 Stat. 132), additional allotment Lac Du Flambeau; Act June 4, 1924 (43 Stat. 376), allotment of Eastern Cherokee Reservation.

See also Ind. Of. File 103761-1917, Red Lake 313, including 6631-1927, Memorandum; Ind. Of. File 60635-1918, Keshena 313, including 9787-1930 Memorandum; S. 4048, 66th Cong. 2d Sess.; H. R. 12980, 66th Cong. 2d Sess.; H. R. 6869, 68th Cong. 1st Sess.; House Rep. No. 1213, 68 Cong. 2d Sess.

All efforts of governmental agencies to promote the economic advancement of the Indians have been decidedly ineffective so far as the ownership of land is concerned. At the beginning of the sixteenth century the American Indians were the only claimants to an area of over 3,000,000 square miles, or approximately two thousand million acres of land and water surface within the boundaries of the territory which was later included within the forty-eight States of the American Union. Four hundred years later, in the year 1900, a little more than 150,000 square miles, or approximately one hundred million acres, were recognized as Indian lands. A third of a century later, in 1933, the lands to which the Indians could assert a valid legal title had shrunk to approximately 50,000,000 acres. For each forty acres available to the red race in the year 1500 for hunting or other use only one acre remained in the legal possession of the representatives of this race in 1936. Nor does a mere comparison of figures tell the whole story. At least 15,000,000 of the remaining 50,000,000 acres may be classed as semi-desert and another 5,000,000 acres as comparatively unproductive mountainous or swampy land.

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[29] *History of Indian Tribes,* VI, p. 321.

For annual expenditures after March 4, 1789, see Hearings before Sub-Com. of House Com. on Ind. Aff., 74th Cong. 1st Sess., on H. R. 7781, p. 725, Government Printing Office, 1935.

There are slightly over 300,000 recognized Indians in the United States, including practically all of the mixed-bloods and those not enrolled as members of any tribe. The amount of land still held in 1933 as Indian land was sufficient to afford each Indian approximately 160 acres if it were equally divided. This is the unit that has been quite generally accepted in the United States as the amount needed for the sustaining of a family and is in fact approximately ten times the amount that could be apportioned to each person in the United States in 1936 if the total area of the forty-eight States were equally divided among the 127,000,000 inhabitants. It is true that the lands remaining in Indian ownership are not equal in quality, acre for acre, with the average land within the States; yet it must be remembered that there are hundreds of millions of acres of land within the United States, not within Indian reservations, that are arid, swampy, mountainous or otherwise nonproductive. The disparity in land holdings between the Indians and the other inhabitants of the United States is not as great as some have assumed. The limited amount of land still held by the Indians derives its chief significance from the fact that the Indians have never to a marked extent entered into the urban industrial life of the nation. If they are to remain in rural communities, they will, obviously, need a larger portion of land per capita than the other inhabitants, a majority of whom are now living in cities or villages.

The Indians of the United States have irretrievably lost their great land heritage and they have received in return but a very small fraction of the present value. However, in considering the relative insignificance of this return, we must remember that the present values have been created chiefly by the increase of population that resulted from the coming of the other races to America. The title to immense areas acquired from the Indians, either by the American Colonies or by the United States, was later sold for unbelievably small amounts. The great Bingham purchase of timber land in Maine was acquired for twelve cents an acre;[30] the Macomb purchase in northern New York for sixteen cents an acre.[31] Even after the Civil War land scrip representing millions of acres acquired from the Federal Government for educational purposes under the Morrill act of 1862 was sold by the States for from twenty-five to fifty cents per acre.[32] Some of this scrip was located on timber lands in the Lake States or on agricultural lands west of the Mississippi that later sold for from fifty to a hundred times as much as the States received. A large part of the lands received from the United States by various States under the swamp land grants, much of which land was heavily forested, was sold at rates comparable to those received for Indian lands during the same period.

Friends of the Indians should be primarily concerned not over the question of the relatively small return that the Indians may have received for the great areas over which they have lost control, but with the inadequacy of the areas which they still own to afford them a reasonably satisfactory income in the future, either by agriculture or stock-raising, supplemented by forest and game production. It has long been recognized by some of those familiar with conditions among the Indians that the amount of land remaining in Indian ownership, or held in trust by the United States for their beneficial use, was not sufficient to care for their future needs and to correct this situation

[30] *The Timberman,* Nov. 1934 (Portland, Ore.), p. 27; 2,000,000 acres at 12½ cents purchased in 1793, Frank H. Lamb article.

[31] Flick, *History of the State of New York,* V (Col. Univ. Press, 1934), p. 189; Hough, *History of St. Lawrence and Franklin Counties,* p. 252; sale in 1791 comprised nearly 4,000,000 acres, Hough, *History of Lewis County,* pp. 21-23. Dr. John C. Gifford states land in New Jersey within 50 miles of New York City sold after 1875 for as low as 9 cents an acre.

[32] Address General Daniel Butterfield on Ezra Cornell, delivered Jan. 11, 1898 at Cornell University, Ithaca, N. Y., p. 5.

Commissioner Collier has stressed very vigorously a policy of holding under the Indian title all lands now in the possession of the Indians and of acquiring large additional areas. Efforts have been directed largely to the re-acquirement for the Indians of lands within the boundaries of reservations as to which the title had been alienated either through the sale of allotments or the homesteading of lands that had been opened to entry after allotments had been completed on particular reservations. The large amount of federal funds, made available for land purchase under the Roosevelt policy of withdrawing marginal land from agricultural production, has made possible a substantial increase in the area of land that may be assigned to the use of the Indians and the unprecedented appropriations of national funds for the physical improvement of forest and grazing lands within reservations have been of inestimable benefit to the Indians.

Thus this depressing record of the constantly dwindling land estate of the Indians has been brightened appreciably as a result of the national awakening to the fact that large areas of forest and range land formerly within Indian reservations that had been eagerly acquired by whites for the establishment of homes were not suitable for agricultural use. Furthermore, the discouraging record as to past reduction in the land holdings of the Indians should not blind the student of Indian Affairs to the great progress that the Indian race has made in education and the development of character and civic responsibility. More than one-half of all the Indians in the United States can speak, or at least understand, the English language; many thousands of others speak Spanish or French. Most of the Indians in the United States under thirty years of age have spent from three to eight years in school, while thousands have completed high school courses and many have received collegiate degrees. A very large number of Indians are without substantial material possessions—even to the point of pauperism—yet there are also many who are successful farmers, ranchers and business men. In fact Indian men and women may be found in nearly every occupation. They have held positions of public trust, either by appointment or election, through the whole range of public office from local road supervisor or justice of the peace to Senator and Vice-President. The Indians have achieved a recognized and important place in the American nation. The tribes that occupied the greater part of the area embraced within the United States have been in real contact with modern civilization less than two hundred years,—a period of time so brief in the history of mankind that it is almost negligible—yet they have advanced in that time from a state of barbarism or savagery to a position in which they share with their fellow-citizens the fullness of life enjoyed by one of the most progressive nations in the world. They may and should face the future with confidence. Fortunately the Indians have comparatively little racial prejudice to overcome. In fact the American public generally is especially interested in and well-disposed toward Indians. The attitude of their fellow-citizens is not one of repression but rather one of encouragement to any Indian who shows evidence of a desire to advance himself materially, mentally or morally. The future of the race as a whole is in the hands of the individuals of the race.

The American Indian has lost a continent but has won a civilization.

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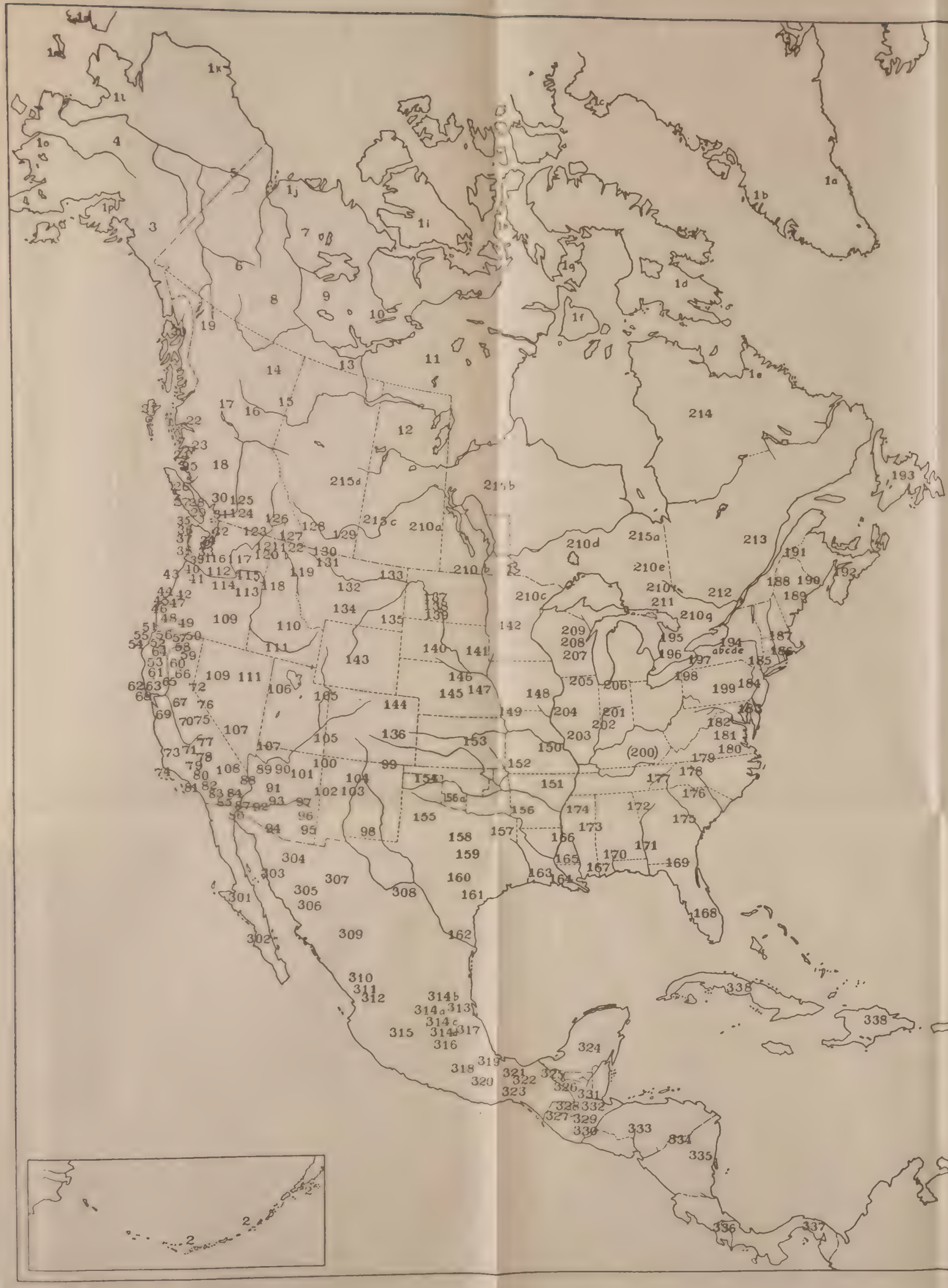

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1. Eskimo:
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    - *c* Smith Sound
    - *d* Baffin Land
    - *e* Labrador-Ungava
    - *f* Southampton Id.
    - *g* Melville Peninsula
    - *h* Boothia
    - *i* Victoria Land
    - *j* Mackenzie
    - *k* Point Barrow
    - *l* West Alaska
    - *m* Siberia
    - *n* St. Lawrence Id.
    - *o* Kuskokwim
    - *p* Kenai Peninsula
2. Aleut
3. Ahtena
4. Khotana
5. Loucheux
6. Nahane
7. Hare
8. Strong-Bow
9. Dog-Rib
10. Yellow-Knives
11. Caribou-Eaters
12. Chipewyan
13. Slavey
14. Sekanai
15. Beaver
16. Carrier
17. Babine
18. Chilkotin
19. Tahltan
20. Tlingit
21. Haida
22. Tsimshian
23. Bella Bella
24. Bella Coola
25. Heiltsuk
26. Kwakiutl
27. Nutka
28. Comox
29. Songish
30. Squamish
31. Cowichan
32. Puyallup
33. Nisqualli
34. Twana-Skokomish
35. Makah
36. Quileute
37. Quinaielt
38. Chehalis
39. Cowlitz
40. Chinook
41. Molala
42. Kalapuya
43. Tillamook
44. Alsea
45. Coos
46. Tututni
47. Umpqua
48. Takelma
49. Klamath
50. Modoc
51. Tolowa
52. Hupa
53. Wailaki
54. Wiyot
55. Yurok
56. Karok
57. Shasta
58. Achomawi
59. Atsugewi
60. Yana
61. Yuki
62. Pomo
63. Wappo
64. Wintun
65. Patwin
66. Maidu
67. Miwok
68. Coast Miwok
69. Costanoan
70. Northern Yokuts
71. Southern Yokuts
72. Washo
73. Salinan
74. Chumash
75. Western Mono
76. Eastern Mono
77. Tübatulabal
78. Kawaiisu
79. Kitanemuk
80. Serrano
81. Gabrieliño
82. Juaneño
83. Luiseño
84. Cahuilla
85. Diegueño
86. Cocopa
87. Yuma
88. Mohave
89. Walapai
90. Havasupai
91. Yavapai
92. Maricopa
93. Pima
94. Papago
95. Chiricahua Apache
96. San Carlos Apache
97. White Mountain Apache
98. Mescalero Apache
99. Jicarilla Apache
100. Navaho
101. Hopi Pueblos
102. Zuñi Pueblo
103. Keresan Pueblos
104. Tanoan Pueblos
105. Ute
106. Gosiute
107. Southern Paiute
108. Chemehuevi
109. Northern Paiute
110. Bannock
111. Western Shoshoni
112. Wasco
113. Wishram
114. Umatilla
115. Cayuse
116. Klikitat
117. Yakima
118. Nez Percé
119. Flathead
120. Spokan
121. Kalispel
122. Coeur d'Alene
123. Okanagan
124. Lillooet
125. Thompson
126. Shushwap
127. Kutenai
128. Sarsi
129. Blackfoot (proper)
130. Blood Blackfoot
131. Piegan Blackfoot
132. Gros Ventre
133. Assiniboine
134. Crow
135. Northern Cheyenne
136. Southern Cheyenne
137. Hidatsa
138. Mandan
139. Arikara
140. Teton Dakota
141. Yankton Dakota
142. Santee Dakota
143. Wind River Shoshoni
144. Arapaho
145. Pawnee
146. Ponka
147. Omaha
148. Iowa
149. Oto
150. Missouri
151. Quapaw
152. Osage
153. Kansa
154. Kiowa
155. Comanche
156. Caddo

156a Wichita
157 Kichai
158 Waco
159 Tawakoni
160 Tonkawa
161 Karankawa
162 Carrizo
163 Atakapa
164 Chitimacha
165 Natchez
166 Tunica
167 Biloxi
168 Timucua
169 Seminole
170 Alibamu
171 Lower Creek
172 Upper Creek
173 Choctaw
174 Chickasaw
175 Yuchi
176 Catawba
177 Cherokee
178 Tuscarora
179 Tutelo
180 Chickahominy Powhatan
181 Pamunkey Powhatan
182 Potomac Powhatan
183 Nanticoke
184 Delaware
185 Mahican
186 Narraganset-Pequot
187 Massachusetts
188 Abnaki
189 Penobscot
190 Passamaquoddy
191 Malecite
192 Micmac
193 Beothuk
194 *a* Seneca Iroquois
    b Cayuga Iroquois
    c Onondaga Iroquois
    d Oneida Iroquois
    e Mohawk Iroquois
195 Huron
196 Wyandot
197 Neutrals
198 Erie
199 Susquehanna
200 Shawnee
201 Miami
202 Kickapoo
203 Illinois
204 Peoria
205 Prairie Potawatomi
206 Forest Potawatomi
207 Sauk and Fox
208 Winnebago
209 Menomini
210 *a* Plains Ojibwa
    b Bungi Ojibwa
    c Lake Superior Ojibwa
    d Saulteaux Ojibwa
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    f Nipissing Ojibwa
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211 Ottawa
212 Algonkin
213 Montagnais
214 Naskapi
215 *a* Eastern Cree
    b Swampy Cree
    c Plains Cree
    d Western Cree
301 Cochimi
302 Waicuri
303 Seri
304 Opata
305 Pima Bajo
306 Yaqui
307 Tarahumare
308 Lipan
309 Tepehuane
310 Cora
311 Huichol
312 Tepecano
313 Huastec
314 *a* Otomi
    b Pame
    c Mazahua
    d Pirinda
315 Tarasca
316 Aztec
317 Totonac
318 Mixtec
319 Mazatec
320 Zapotec
321 Mixe
322 Zoque
323 Huave
324 Maya
325 Tzotzil
326 Tzeltal
327 Mam
328 Ixil
329 Kiche
330 Cakchikel
331 Kekchi
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333 Lenca
334 Ulva
335 Mosquito
336 Talamanca
337 Cuna
338 Arawak

UNIVERSITY OF CALIFORNIA
DEPARTMENT OF ANTHROPOLOGY
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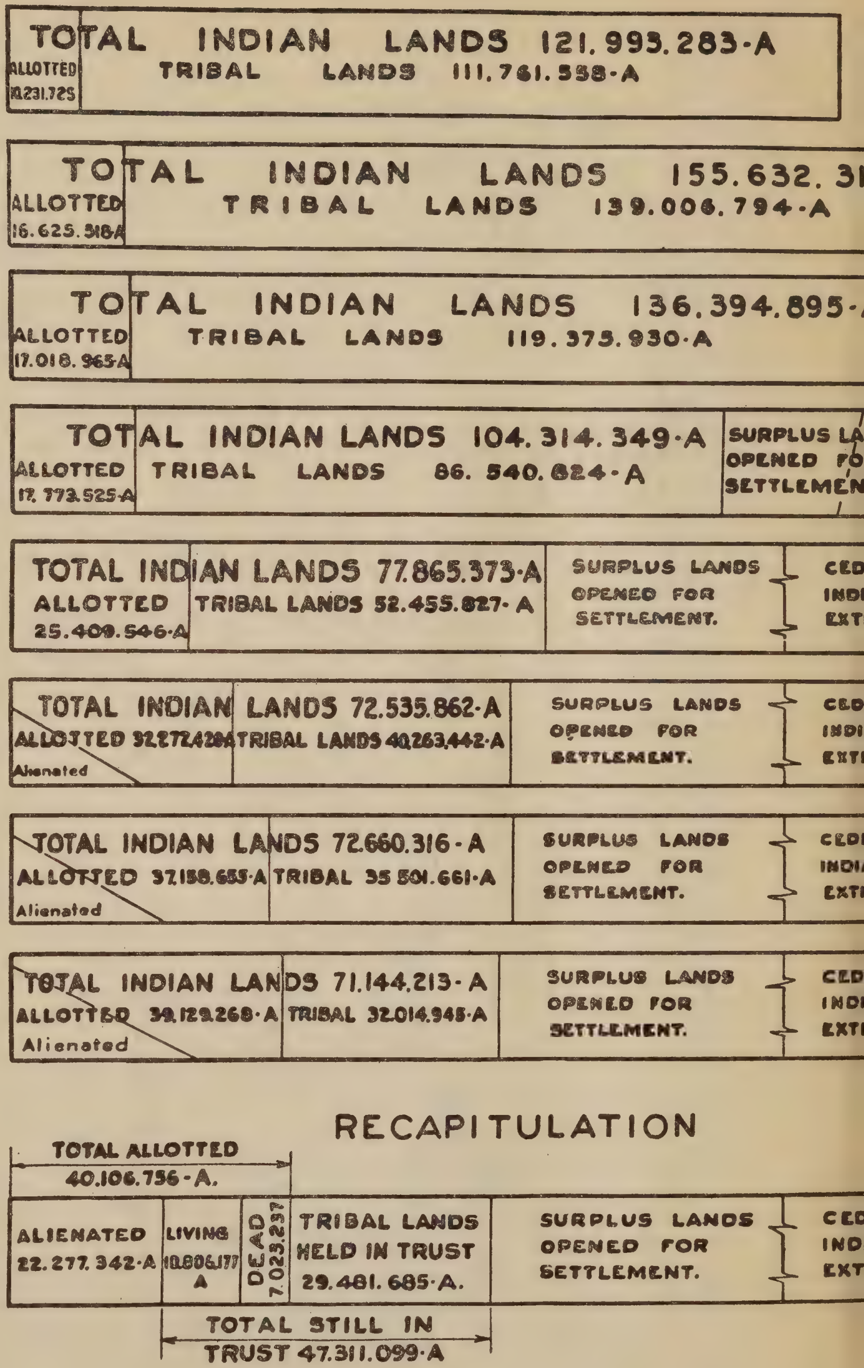
TOTAL INDIAN LANDS 121.993.283-A
ALLOTTED 10.231.725
TRIBAL LANDS 111.761.558-A
TOTAL INDIAN LANDS 155.632.31
ALLOTTED 16.625.518A
TRIBAL LANDS 139.006.794-A
TOTAL INDIAN LANDS 136.394.895-
ALLOTTED 17.018.965A
TRIBAL LANDS 119.375.930-A
TOTAL INDIAN LANDS 104.314.349-A
ALLOTTED 17.773.525-A
TRIBAL LANDS 86.540.824-A
SURPLUS LA
OPENED FO
SETTLEMEN
TOTAL INDIAN LANDS 77.865.373-A
ALLOTTED 25.409.546-A
TRIBAL LANDS 52.455.827-A
SURPLUS LANDS OPENED FOR SETTLEMENT.
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EXT
TOTAL INDIAN LANDS 72.535.862-A
ALLOTTED 32.272.420A
Alienated
TRIBAL LANDS 40.263.442-A
SURPLUS LANDS OPENED FOR SETTLEMENT.
CED
INDI
EXT
TOTAL INDIAN LANDS 72.660.316-A
ALLOTTED 37.158.655-A
Alienated
TRIBAL 35.501.661-A
SURPLUS LANDS OPENED FOR SETTLEMENT.
CED
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EXT
TOTAL INDIAN LANDS 71.144.213-A
ALLOTTED 39.129.268-A
Alienated
TRIBAL 32.014.945-A
SURPLUS LANDS OPENED FOR SETTLEMENT.
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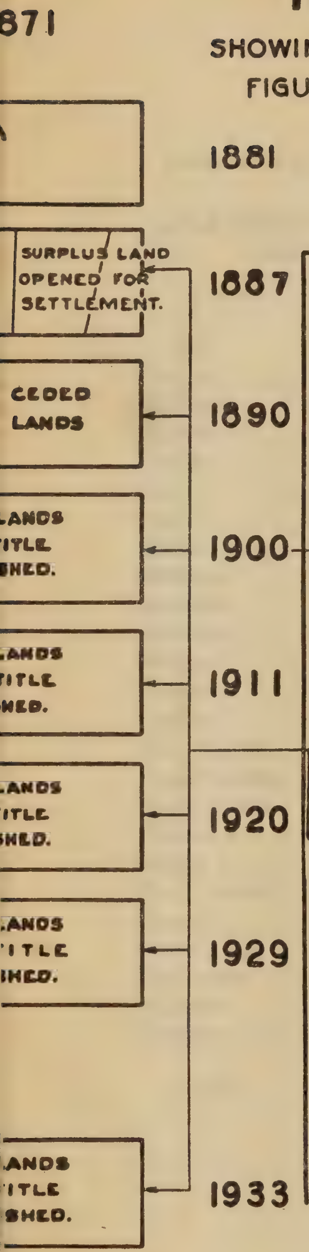
INDI
EXT
RECAPITULATION
TOTAL ALLOTTED 40.106.756-A.
ALIENATED 22.277.342-A
LIVING 10.806.177 A
DEAD 7.023.237
TRIBAL LANDS HELD IN TRUST 29.481.685-A.
SURPLUS LANDS OPENED FOR SETTLEMENT.
CED
IND
EXT
TOTAL STILL IN TRUST 47.311.099-A

INDIAN LANDS

SHOWING TOTAL AREAS 1871 TO 1933

FIGURES FOR 1871 TO 1929 TAKEN
FROM INDIAN OFFICE REPORTS
FIGURES FOR 1933 TAKEN FROM
RECENT LAND STUDIES



Up to this date, (1900), the land that was passing from Indian ownership was practically all tribal land that had been thrown open to white settlement in accordance with agreements made with the various tribes. While there had been some legislation permitting sales of allotted lands belonging to members of a few small tribes, there was no general legislation until 1902, when a law was passed permitting the heirs of a deceased allottee to sell the ancestors' allotment, with the approval of the Secretary of the Interior. In 1907 an act was passed authorizing a living allottee to dispose of his land under rules and regulations to be prescribed by the Secretary. In 1906 Congress authorized the Secretary to issue a patent in fee to any Indian whom he deemed competent and capable of managing his or her own affairs. Moreover, in 1906 Congress removed restrictions on alienation of all allotted lands held by adult mixed-blood Indians of the White Earth Reservation, in Minnesota; and in 1908 from the lands of all Indians of the Five Civilized Tribes, of Oklahoma, of less than one-half Indian blood, and of all but the homestead of Indians enrolled as half or more than half, but of less than three-quarters Indian blood. It also provided that the death of any Indian allottee of the Five Civilized Tribes removed the restrictions on alienation of his land.

The result of the various Congressional provisions has been that the lands belonging to the individual Indians, as well as the tribal lands, have diminished steadily.

NOTE:-

Some agreements and acts provided that surplus lands in excess of allotment requirements should be ceded to and paid for by the United States, all Indian title to such lands being extinguished. These lands are classed as "Ceded."

Other agreements and acts provided that surplus lands should be opened for entry under United States land laws, the equitable title remaining in the Indian Tribe until payments should be completed; the United States acting as trustee for disposal of these lands. These lands are classed as "Opened for Settlement."

No segregated records of areas of these classes of "Surplus" lands are available.

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APPENDIX

[REPRODUCED WITH PERMISSION OF COMMISSIONER OF INDIAN AFFAIRS]

TABLE SHOWING AREAS OF RESTRICTED LANDS (ALLOTTED AND TRIBAL), ON INDIAN RESERVATIONS

As of October 1, 1936.

Summary Indian Reservations

State	Acreage
Arizona	19,088,602
California	568,548
Colorado	435,583
Florida	26,741
Idaho	517,872
Iowa	3,480
Kansas	38,058
Michigan	13,635
Minnesota	742,857
Mississippi	2,609
Montana	6,054,808
Nebraska	67,947
Nevada	1,039,448
New Mexico	5,739,449
North Carolina	63,211
North Dakota	3,184,716
Oklahoma	2,881,103
Oregon	1,572,792
South Dakota	4,823,828
Texas	3,071
Utah	1,666,688
Washington	1,724,339
Wisconsin	419,752
Wyoming	719,789
Total	51,399,526

As of October 1, 1936.

INDIAN RESERVATIONS

	Acreage of allotted lands still held non-taxable	Acreage of tribal lands
ARIZONA:		
Camp McDowell	Unallotted	24,971
Camp Verde	“	446
Colorado River	8,410	232,990
Cocopah	Unallotted	400
Fort Apache	“	1,681,290
Fort Mojave	“	31,328
Gila Bend	“	10,238
Gila River	97,605	274,417
Havasupai	Unallotted	518
Hualapai or Walapai	“	394,000
Kaibab	“	138,240
Navajo (inc. Hopi)	“	11,578,358
Papago & San Xavier	41,580	2,693,974
Salt River	25,205	22,317
San Carlos	Unallotted	1,834,240
Yavapai	“	75
Total	172,800	18,915,802
CALIFORNIA:		
Camp Independence	119	144
Cold Springs	Unallotted	160
Colony or Nevada	“	75
Colorado River	“	80,500
Digger	“	370
Fort Bidwell	“	4,038
Hoopa Valley	17,719	96,274
Inyo County	Unallotted	560
Mission	14,410	243,869
Paiute	Unallotted	2,560
Round Valley	20,175	1,835
Tule River	Unallotted	46,571
Yuma	8,260	30,909
Total	60,683	507,865
COLORADO:		
Ute	39,440	396,143
FLORIDA:		
Seminole	Unallotted	26,741
IDAHO:		
Coeur d'Alene	62,895	1,906
Fort Hall	314,513	21,263
Fort Lapwai-Nez Percé	83,105	34,190
Total	460,513	57,369

	Acreage of allotted lands still held non-taxable	Acreage of tribal lands
IOWA:		
Sac and Fox	Unallotted	3,480
KANSAS:		
Chippewa and Munsee		None
Iowa (partly in Nebraska)	952	162
Kickapoo	5,120	644
Potawatomie	30,286	—
Sac and Fox (partly in Nebraska)	837	57
Total	37,195	863
MICHIGAN:		
Isabella	1,473	None
L'Anse	10,714	85
Ontonagon	765	70
Ottawa & Chippewa (Bay Mills, etc.)	Unallotted	528
Total	12,952	683
MINNESOTA:		
Boise Fort	50,523	435
Deer Creek	216	None
Fond du Lac	23,672	124
Grand Portage	11,096	9,485
Leech Lake	23,032	322
Mdewakanton	Unallotted	1,151
Mille Lac	1,960	18
Red Lake	Unallotted	543,528
Vermillion Lake	"	1,080
White Earth	17,203	8,620
White Oak Point & Chippewa	50,152	240
Total	177,854	565,003
MISSISSIPPI:		
Choctaw	None	2,609
MONTANA:		
Blackfeet	1,161,424	44,240
Crow	1,835,918	277,065
Fort Belknap	544,878	55,571
Fort Peck	1,093,252	24,452
Flathead	227,458	245,012
Northern Cheyenne	233,120	256,380
Rocky Boy	Unallotted	56,038
Total	5,096,050	958,758
NEBRASKA:		
Niobrara-Ponca	1,634	1,247
Omaha	26,665	4,420
Sioux-addition	Unallotted	552
Winnebago	32,331	1,098
Total	60,630	7,317

	Acreage of allotted lands still held non-taxable	Acreage of tribal lands
NEVADA:		
Duck Valley (partly in Idaho)	Unallotted	321,920
Fort McDermitt	“	21,000
Moapa River	616	523
Paiute or Fallon	4,630	230
Shoshone & Paiute	Unallotted	160
Paiute & Shoshone	“	280
Pyramid Lake	“	322,000
Summit Lake	“	8,025
Walker River	9,820	349,404
Winnemucca	Unallotted	840
Total	15,066	1,024,382
NEW MEXICO:		
Jicarilla	354,327	416,802
Mescalero	Unallotted	474,240
Navajo	“	2,744,390
Pueblos (22 separate pueblos)	“	1,619,690
Southern Ute (Estimated)	“	130,000
Total	354,327	5,385,122
NORTH CAROLINA:		
Qualla	Unallotted	63,211
NORTH DAKOTA:		
Devils Lake or Fort Totten	54,372	921
Fort Berthold	482,368	11,133
Standing Rock	2,328,414	104,887
Turtle Mountain	202,420	201
Total	3,067,574	117,142
OKLAHOMA:		
Cheyenne & Arapaho	173,586	40
Chilocco Reserve	Unallotted	8,640
Five Civilized Tribes	1,472,724	45,951
Iowa	2,709	20
Kickapoo	5,769	480
Kaw	13,515	260
Kiowa, Comanche, & Apache	378,336	12,252
Modoc	168	34
Oakland or Tonkawa	2,579	160
Osage	436,114	968
Otoe	45,755	1,360
Ottawa	1,677	None
Pawnee	37,297	840
Ponca	37,115	911
Potawatomie	5,342	511

	Acreage of allotted lands still held non-taxable	Acreage of tribal lands
Quapaw	17,148	440
Sac & Fox	22,610	800
Seneca	7,725	104
Shawnee	22,620	86
Wichita	118,000	4,151
Wyandotte	2,371	535
Total	2,803,160	78,543
OREGON:		
Grande Ronde	910	440
Klamath	138,779	863,815
Siletz	7,310	3,200
Umatilla	94,081	7,822
Warm Springs	134,520	321,915
Total	375,600	1,197,192
SOUTH DAKOTA:		
Crow Creek	153,413	1,077
Sisseton	119,347	1,347
Cheyenne River	917,298	443,251
Lower Brule	112,720	964
Pine Ridge	1,779,700	181,207
Rosebud	1,046,375	32,676
Yankton	33,200	1,253
Total	4,162,053	661,775
TEXAS:		
Alabama & Coushatta (Polk County)	Unallotted	3,071
UTAH:		
Goshute	Unallotted	34,500
Paiute	"	10,240
Shivwitz	"	26,880
Koosharem	"	120
Kanosh	"	1,000
Navajo	"	1,242,560
Skull Valley	"	18,640
Uintah Valley	67,958	249,340
Uncompahgre	15,450	None
Total	83,408	1,583,280
WASHINGTON:		
Chehalis	2,237	5
Columbia	8,919	None
Colville	306,227	220,000
Hoh River	Unallotted	640

	Acreage of allotted lands still held non-taxable	Acreage of tribal lands
Kalispell	3,808	821
Lummi	10,759	2
Makah	3,727	19,312
Muckleshoot	3,056	None
Nisqualli	1,109	None
Ozette	Unallotted	640
Port Madison	4,282	65
Puyallup	Unrestricted	62
Quileute	Unallotted	837
Quinaielt	186,917	900
Shoalwater	Unallotted	335
Skokomish	3,008	10
Snohomish or Tulalip	17,689	324
Spokane	50,507	82,648
Squaxon Island	1,412	None
Swinomish	5,549	90
Yakima	365,998	422,444
Total	975,204	749,135
WISCONSIN:		
Lac Courte Oreille	40,081	1,080
Lac du Flambeau	27,964	24,363
La Pointe	71,225	1,766
Menominee	Unallotted	231,680
Potawatomie	"	14,556
Red Cliff	6,216	40
Oneida	692	89
Total	146,178	273,574
WYOMING:		
Wind River or Shoshone	194,789	525,000
COLUMNAR TOTALS	18,295,476	33,104,050
GRAND TOTAL	51,399,526	

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